THE KING'S COUNCIL IN THE NORTH

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BY

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WITH COLOURED MAP

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TO THE MEMORY
OF MY MOTHER.

PREFACE.

A few words of explanation on one or two points seem called for. Especially, it seems necessary to explain why so much political history has been included in a work dealing primarily with a law-court. This is due to the dual character of the Council in the North, its administrative responsibility constantly leading to an extension of its judicial powers, and resentment at its governmental action as constantly finding expression in opposition to its judicial authority. Some reference to the political history of the North during the period of the Council's existence was therefore necessary. Unfortunately, the standard works dealing with the period seldom do more than refer to events in the North, and usually the references are derived from Chronicles and other secondary authorities. My own researches having convinced me that these authorities are not always to be trusted, I was faced with these alternatives: either to write a history of the Council as a law-court with references to political history which must appear dogmatic because they implied views differing in many ways from those generally received, which yet were not supported by a reasoned statement of the evidence; or to write an account of the political history of the North during the period under consideration as well as an account of the Council itself. At first I chose the former alternative, and it was a history of the Council as a law-court that I submitted to the University of London for the degree of Doctor of Literature in 1911. However, the accusation of dogmatism then made by those who examined it, convinced me that I had chosen wrongly, and that chapters must be added

setting forth my interpretation of the political history of the North during the period of the Council's existence. This I have now done; and I only hope that the division into Parts dealing mainly with distinct aspects of the subject has removed most of the objections to this course. Some repetition was unavoidable; but I trust that the convenience of bringing together all that bears on the history of the Council as a court, will excuse it. As it stands now, Chapters 1-4 of the thesis have been expanded into the six Chapters of Part I; Chapter 5, which was a summary of the Council's administrative work, has given place to the four Chapters of Part II; Chapters 6-11 constitute Part III; and Chapter 12 has been expanded into the three Chapters of Part IV.

It remains only to add an acknowledgement of gratitude to those who have in any way helped me: to the Marquis of Salisbury and to the Corporations of York and Hull for giving me access to the documents in their possession; to Mr. Hall and his colleagues at the Record Office for directing my attention to possible sources of information; to Professor Pollard for still more valuable, but also more intangible, assistance; to Mr. Staton for the care he bestowed on the map; and to my sister for much patient help with the drudgery that goes to the making of a book. But the greatest debt of all, that which I owe to my Mother for the encouragement without which this book would never have been written, can now be paid only to a memory.

May, 1914.

It is now necessary to add that the publication of this book, which was to have appeared in 1914, was stopped by the outbreak of war.

July, 1920.

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COLOURED MAP

PART I.

THE PROBLEM OF THE NORTH.

CHAPTER I.

The Problem of the North.

More than quarter of a century ago Bishop Creighton pleaded [1] for 'a fuller recognition of the fact that English history is at the bottom a provincial history'. At the moment he was concerned only to urge that historians should realise that 'local character, habits, institutions, modes of thought and observation, are all the result of a long process, differing in different parts of England', and should give to local history some of the serious consideration generally reserved for national history. There is, however, another sense in which it may with truth be said that 'English history is at the bottom a provincial history'. Closer study of both local and national history is forcing us to realise that again and again the course of the main stream of national history has been determined by 'the vigorous undercurrent of a strong provincial life in different parts of England'.

Nowhere was this current so strong as north of the Trent. A land of mountain and forest, high pasture and moorland waste, which was ever menaced by Scottish raiders, the ancient kingdom of Northumbria retained its identity as a single administrative area throughout the Middle Ages, and as the home of feudalism, the centre of resistance to royal authority, and the natural refuge of lost causes, presented successive rulers of England with their most urgent and baffling problem.

The 'Problem of the North', as it has been called [2], was created by two factors, the one geographical, the other political.

[1] "The Northumbrian Border", *Archaeological Journal*, xiii. p. 41 ff.

[2] Lapsley "The Problem of the North", *American Historical Review*, v. pp. 440 ff.

The greater part of the northern counties of Yorkshire, Durham, Northumberland, Cumberland, and Westmorland is upland rising steeply to heights of 1,000 and 1,500 feet, covered with moors over which the red deer still roamed at the close of the sixteenth century, and habitable only in the long dales scored deep in its once forest-clad sides by streams which in winter are foaming torrents.

During the Middle Ages the only road over the high wastes was the Roman road across the bleak Stanemore from Penrith to Catterick Bridge and York, which was often blocked with snow for months at a time; but at lower altitudes there were three other fairly good roads. The first crossed the Pennines from Airedale to Ribblesdale; the second was the 'king's street' running from Lancaster over Shap Summit to Penrith and so through Inglewood Forest to Carlisle and the mosses round the Solway; the third ran through the Tyne valley from Carlisle to Newcastle. Apart from these roads, the upland could be crossed only by difficult bridlepaths climbing over desolate moors, skirting treacherous mosses, dipping into wild ravines, winding through the tangled growth of virgin forests, and fording rivers impassable when in spate.

On the west, the upland reaches the sea at several points, bringing down to the water's edge the forest which gave cover to the wild boar and the wolf till the fourteenth century, and isolating the dales clustered round Morecambe Bay and the Solway Firth. On the east, the dales open on the low, fertile Vale of York, which is cut off from the sea by the bare, chalky Wolds rising high above the forests and marshes of Holderness and the East Riding and by the heather-covered Moors cut up by deep, wooded ravines. The Vale of Pickering, lying between the Wolds and the Moors, was for long ages blocked by impenetrable forests and morasses, and was still marshy and but sparsely populated even in the sixteenth century. The Humber, into which drain all the Yorkshire rivers, is the natural route to the interior; and York, built at the head of the tideway,

over against the junction of the Vales of Pickering and York, is the natural centre of the whole region. 'The fort on the Eure' had been the military centre of Roman Britain to which all roads led. A market town, a port, and a cathedral city, it was until the nineteenth century the capital of northern England, the focus of all its activities, social, political, ecclesiastical, and economic, a city second in importance to London only. South of the Humber, between Doncaster and the sea, stretched the marshes of Hatfield Chase and the Isle of Axholme, filling the lower, as Sherwood Forest did the upper, part of the narrow trough between Lincoln Edge and the Peak, through which flows the Trent. How formidable a barrier this frontier of forest, fen and fell was before the marsh was drained and the forest cut down in the seventeenth century, is sufficiently shewn, not only by the failure of the Saxon kings to bring Northumbria under their direct control, but also by the tendency of the old frontier to survive as an administrative boundary in mediaeval England.[3] At its northern end, the Vale of

[3] From the ninth century till the re-arrangement of the dioceses in the sixteenth century it separated the Provinces of Canterbury and York. In the twelfth century it determined the northern circuit of the Itinerant Justices and the Justices of Assize (Madox, *Hist. of the Exch.* i. p. 125 ff.). In the thirteenth century it was the line of demarcation chosen when the northern forests were separated from the southern, and a Chief Justice of the Forests beyond the Trent was appointed (Turner, *Select Pleas of the Forest*, pp. xiv-xv). In the fourteenth century it fixed the extent of the command assigned with the direction of the Scottish war to the Lieutenant-general North of the Trent (*Parl. Writs*, i. p. 270; *Rotuli Scotiae*, i. p. 74). Finally, in the fifteenth and sixteenth centuries it marked the limits of the jurisdiction of the Council in the North. The apparent exceptions only emphasise the tendency. When the Archbishopric of York was created, Northumbria reached to the Trent throughout its length; so Nottingham was included in the northern Province. That shire with Derby was included in the northern Forest Eyre because the forest did not, like the political boundary, follow the watershed but lay on either side of it, and the military value of the archers who, like Robin Hood and his Merry Men, poached the King's deer in Sherwood Forest, sufficiently explains the assignment of the forest shires to the General on whom the defence of the northern march fell; while the palatinate jurisdiction created in Lancashire in the

York is closed by a spur of high ground thrown out from the central mass between the Tees and the Tyne, covered even in the seventeenth century with great oak-woods[4] which in an earlier age had made of it 'a waste wilderness, the habitation of wild animals, subject to no man's sway'.[5] Beyond the Tyne, the plain narrows to a ten-mile wide strip along the coast to the Lammermuirs, at whose foot the lowland is carried by the valley of the Tweed far into the heart of the Scottish upland. Half-way up the valley, the Gala and the Esk give easy access to the lowland along the southern shore of the Forth from Edinburgh to Dunbar; while on the right bank Teviotdale runs up into the high, barren Cheviots, over which several passes lead to Liddesdale, Tynedale and Redesdale, offering to the Scots the choice of half-a-dozen downhill roads into England and making the northern frontier as difficult to hold as the southern one was easy.

In such a land economic and social life was singularly uniform and unbroken. Essentially a pastoral country, even in the lowland marsh and forest left scant room for the agrarian manor, and 'in no part of England did the manorial system sit so lightly, or work such little change'. In the hill-country, the sheep and cattle pastured on the moorland wastes were the sole wealth of the hardy peasants whose homesteads were grouped in lonely hamlets in the long dales or in forest clearings. Mining, which has enabled the North of England to become the workshop of the world, was as yet in its infancy; and apart from a certain amount of lead, obtained chiefly in Richmondshire, the only marketable products of the North were wool and hides, and these were of such poor quality that the Newcastle merchants had to be licensed to sell them wherever they could

fourteenth century rendered impossible its subjection to the Council in the North.

[4] *Camd. Misc.* iii, "A Relation of Abuses committed against the Commonwealth (1629)," p. 5.

[5] Simeon of Durham, *Vita Oswaldi*, cap. 1.

find a market for them, notwithstanding the Statute of the Staple.[6] The towns were few in number and small in size, York being the only one with more than 5,000 inhabitants even at the close of the fifteenth century.[7] With the exception of a few ports, they were mere market towns; and such industries as they had supplied local needs only. The manufactures of Yorkshire, which were destined to change the whole aspect of the north country, only began to attract attention in the middle of the sixteenth century, when the little clothing-towns of the West Riding, having broken down the monopoly of the northern woollen manufactures long enjoyed by York, were in their turn able to secure for themselves a monopoly of cloth-weaving at the expense of the country districts.[8] Even so, with little foreign trade and no staple industry, the North remained very poor, and there was very little money in the country.

This lack of money, by retarding the development of industry and trade, prevented the surplus population from finding in urban handicrafts a livelihood outside of agricultural pursuits. So the younger sons of the gentry as well as of the peasants were forced to turn to the trade of soldiering and flocked to the service of those nobles who could pay them well, or at least feed and clothe them. As the peasants still paid many of their dues in kind, even in the seventeenth century,[9] most of the northern lords found it easy to keep a large number of retainers, even when they did not make a business of war and contract with the king for the supply of troops for the Border-service or for the French wars. Thus, the very poverty of the North, by forcing its sons to make war their trade, secured its political supremacy, at least while the bow and the spear were the only weapons of war. Only with the introduction of artillery,

[6] *Rot. Parl.* iv. pp. 360, 379.

[7] Ashley, *Econ. Hist.* i. pt. 2. p. 11.

[8] *Ibid.* pp. 60, 227.

[9] Nicolson and Burn, *Hist. of Westmorland and Cumberland*, i. pp. 292, 300-2.

which the great lords of the North had no money to buy, and the development of mining and cloth-weaving, which robbed them of their retainers, did that supremacy pass away.

Until then, the North remained almost untouched by the economic, social, and intellectual changes which were breaking up mediaeval society in the South. 'Traces of primitive institutions and primitive tenures', almost unaltered by the influence of French feudal law, 'are found in abundance whenever we penetrate beneath the surface'.[10] Not a few of these institutions and tenures contributed to, even when they were not directly responsible for, much of the disorder prevalent north of the Trent even at the close of the sixteenth century. For instance, the general poverty of the people was aggravated by the wide-spread survival of gavelkind tenure.[11] Through constant division the holdings of the peasants became too small to provide a living for their owners, who, in the Border shires at least, too often took to thieving and cattle-lifting as a means of livelihood. At the same time, the isolation of the plains and valleys fostered strong but intensely local patriotism

[10] Creighton, *op. cit.* p. 58.

[11] Sir John Forster, Warden of the Middle March, writing about the decay of the Borders, 6 June 1575, says, 'The fourth (cause) is that when any inhabitant here hath gotten any interest in a tenement, being scant sufficient for the maintenance of one person, if he chance to die having two sons, he divideth the said tenement betwixt them both, and thus the taverning of the Queen's land is hindrance for keeping of horse and armour' (S. P. For. Eliz. cxxxiv. No. 153). On 1 May 1619, Lord Walden reported that the chief cause of the disorder in Tynedale and Redesdale was the custom of holding lands as not forfeitable for treason of felony (S. P. Dom. Jas. I. cix. No. 6). In 1621 Roger Wodrington was accused to the Council of preventing the forfeitures of lands in Redesdale from coming to his Majesty. In answer, Wodrington stated the mischiefs resulting both in the late and the present reign from the custom in Redesdale of dividing the estates among all the children, not permitting them to be forfeited for any crime committed by the owner within their own franchises (S. P. Dom. Jas. I. cxxiv. No. 132). It should be noted that gavelkind tenure was very common in all the northern shires even in the seventeenth century; e.g. in Hatfield Chase (Hunter, *S. Yorkshire*, i. p. 158).

and kept alive jealousies which only too easily flamed into rancorous hatreds disastrous to order and good government. In fact, if not in name, the blood-feud flourished everywhere in the North down to the seventeenth century, reducing trial by jury to a mere farce and preventing the administration of even-handed justice.

Down to the sixteenth century moreover, the growth of royal authority was effectually checked by the existence of numerous liberties and franchises which the royal officers might not enter. First, there were the baronies, whose owners enjoyed in them the high justiciary rights and the administrative powers conveyed by a grant of '*sac* and *soc*, *tol* and *team*, and *infangthef*', including gallows and the return of all writs save for pleas of the crown.[12] Secondly, there were the honors, whose owners enjoyed in them rights which were little, if at all, short of regal.

Originally, the franchises attached to a barony gave the lord, together with unlimited civil jurisdiction among his tenants, power of life and death and authority to judge all offences committed within the barony save treason and the pleas of the crown. But this reservation had enabled the kings, before the end of the twelfth century, to establish in the baronies the jurisdiction of the crown in all cases of serious crime. The barony courts retained their unlimited civil jurisdiction somewhat longer; but by a judicial interpretation of the Statute of Gloucester (1278) it was restricted to cases involving less than 40s. Thus, by the end of the thirteenth century the barony courts had ceased to be a serious check on the administration of justice by the king's courts.

They remained, however, serious obstacles to the execution of justice; for with the right to administer justice had gone the right to execute it. Neither the sheriff nor any other royal official might enter a barony to make any attachment, save for pleas of the crown, to serve a writ, to take a distress, or to execute a decree, — all must be

[12] "Barony and Thanage", *E. H. R.* xxxv. pp. 191 ff.

done through the lord or his bailiff.[13] These limitations on the power of the crown were the more serious because Northumbria had remained outside the administrative system organised by the West Saxon kings during the tenth century, so that north of the Trent there was no tithing, no frankpledge, no mainpast, and no sheriff's tourn,[14] and the only machinery for the capture of criminals was that provided by the old English law which laid on every free man the duties of obeying the summons to the host, of maintaining watch and ward, and of following the hue and cry. Now, while none denied that these duties were incumbent on all freemen, the influence of French feudal law had transformed even in the North what had been, and in a sense still was, a public obligation into an incident of tenure, a service primarily due to the lord. So, while all men were bound to follow the hue and cry, and to go to the March in defence of the shire against the Scots, the summons must come through the lord or his bailiff.[15] Thus, the execution of justice, the maintenance of the peace, and the defence of the land were almost entirely in the hands of the lords of liberties, so that even in the sixteenth century the sheriffs beyond the Trent had but small force.[16]

The honors were really castellaries created by the Conqueror and his sons, first to protect the northern frontier against the Scots, and then to serve as bases for advancing it from the Ribble and the Tees to the Solway and the Tyne. To secure the eastern half of the earldom of York, the honor of Holderness was created to guard the mouth of the Humber against the Danes, that of Richmond to guard the road over Stanemore against the Scots, and that of Skipton-in-Craven

[13] *L. & P.* iv, Nos. 240-2; *ib.* v. No. 951; *Cal. S. P. Dom. Add. 1566-70*, p. 219.

[14] Morris, *The Frankpledge System*, pp. 48 ff, 80.

[15] "The Office of Warden of the Marches", *E. H. R.* xxxii. p. 486.

[16] Gargrave to Cecil, Feb. 1570; *Cal. of S. P. Dom. Add. 1566-70*, p. 219. It is significant that high constables, petty constables, and other inferior officers of the kind were first appointed for Northumberland in Sept. 1605 (Hatfield MSS. cxii. No. 71).

to guard the road through the Aire Gap against the same foe, the honors of Durham, Hexham and Redesdale in like fashion guarding the Tyne valley. So successful was this policy that the Domesday commissioners were able to include the whole of the old earldom of York in their survey, in which the honors of Clitheroe and Coupland appear as in the hands of Norman lords.[17] William Rufus, following in his father's footsteps, built the castles and created the honors of Kendal and Lancaster[18] as bases for the conquest of Cumbria. After the raid that made him master of that earldom (1092), he divided it into the honors of Allerdale, or Cockermouth,[19] and Carlisle as protection against the vengeance of Malcolm Canmore. The latter's death in the following year not only removed this danger but also enabled William to take into his own hands the whole earldom of Northumberland. Thenceforth, no more honors were created for the defence of the northern frontier, though several were yet to be created as appanages for members of the royal family.[20]

The honors were even more restrictive of royal authority than the baronies. So extensive were their franchises, indeed, that they have been called the 'Northumbrian Palatinates'.[21] They bore, in fact, a close resemblance to the constabularies of southern Scotland,[22] and were really castellates or castellaries,[23] administrative districts connected with the custody of the castles from which most of them took their names, and within them the lord enjoyed all *iura regalia*. All things considered, it is probable that the honor of Lancaster may be taken as typical of the whole class.[24] There the lord took

[17] Domesday Book, 301b, 332.

[18] Tait, *Mediaeval Manchester*, p. 158.

[19] Cockermouth was the caput of Allerdale.

[20] E.g. Knaresborough, created by Henry III for Edmund Crouchback.

[21] Page, 'Northumbrian Palatinates', *Archaeologia*, li. pt. 1. p. 143 ff.

[22] Neilson, "Tenure by Knight-service in Scotland", *Juridical Review*, xi. p. 73.

[23] 'Barony and Thanage', *E. H. R.* xxxv. p. 197-8.

[24] Tait, *op. cit.* pp. 162-196.

all the profits, both of jurisdiction and of the demesne lands, making no account to the Exchequer,[25] and his seneschal or steward performed all the duties and possessed all the powers of a royal sheriff.[26] His court, generally called a *curia militaris*,[27] had the same jurisdiction as a shire-court, including all the pleas of the crown;[28] and his authority extended over the barons within the honor, so that it was a nice question whether or no they remained tenants of the crown.[29] No royal official might enter an honor for any purpose: all writs had to be addressed to the lord, whose bailiff made all attachments;[30] and when the men of the honor were required to go in the king's army, a separate mandate had to be sent to the lord.[31] To all intents, indeed, the honors were shires in private hands, and were often so called.[32]

Even when the military need for the honors had passed away, the feudal doctrine, 'Once an honor, always an honor', preserved them from extinction; and it was not until the failure of the baronial rising of 1173 and the capture of William the Lion placed the North at the mercy of Henry II that a real effort could be made to bring it under the control

[25] So too in Northumberland whenever there was an earl (Page, *op. cit.* pp. 143 ff.).

[26] Roger Mowbray in Northumberland (*County Hist. of Northumberland*, i. p. 25, n3), Ranulf Meschin in Carlisle (Bain, *Cal. Doc. Scot.* ii. No. 64), and the earls of Richmond (Gale, *Honor of Richmond*) had such stewards.

[27] There was a *curia militaris* in Coupland (Bain, i. No. 180), in Skipton (Whitaker, *Craven*, p. 230), and in Ripon (*Fifth Report on Courts of Common Law*. p. 783. App. A. pp. 9, 116).

[28] The lords of Coupland claimed the pleas of the crown in 1292 (*Placita de Quo Warranto*, p. 112-3).

[29] There were barons in Carlisle (*Victoria County Hist., Cumberland*, i. p. 308), Richmond (Tait, *op. cit.* p. 182), and Durham (Bain, i. No. 247) as well as in Lancaster and Chester. Richard I, when giving Bishop Puiset the Wapentake of Sadbergh, gave him the services of the barons there (Surtees, *Hist. Durham*, i. p. cxxvii).

[30] *Placita de Quo Warranto*, p. 112-3.

[31] E.g. in 1258, (Bain, i. No. 2103). Cf. 'The Office of the Warden of the Marches', p. 487.

[32] Stubbs, *Const Hist. Eng.* i. p. 111 (6th ed.).

of the crown. Fortune, however, had already favoured the king by dividing some of the most important honors and baronies among co-heiresses whom he married to his most trusted officials ;[33] so he met with no opposition when he added the honors of Coupland and Allerdale to that of Carlisle to form the county of Cumberland, and the barony of Appleby, detached from Carlisle, to that of Kendal to form the county of Westmorland, and placed the new shires under two of his justices, Robert de Vaux and Ranulf Glanvil, as sheriffs.[34]

As the chief executive officers of the crown, the sheriffs had always been powerful ; but now they became permanent officials in whose hands was concentrated the whole power of the crown.[35] Such of them as were judges, were generally sent as Itinerant Justices to the circuit in which their shires lay ; and Glanvil and de Vaux regularly visited the counties beyond the Trent to declare in the king's name that law which it was their duty as sheriffs in the same counties to execute.[36] Resistance was impossible ; for, besides the command of the local levies given to them by the Assise of Arms (1181), as keepers of one or more of the royal castles in their shires they had at their disposal well-trained bands of mercenaries. The possibilities of oppression and outrage latent in the system are obvious;[37] and they were fully revealed in John's reign, when the sheriffs, supported by foreign soldiery, became the chosen

[33] Henry married the heiress of Richmond to his own son Geoffrey, the heiress of Allerdale to his Justiciar's son, Reginald Lucy, the heiress of Gilsland to Robert de Vaux, one of the Barons of the Exchequer, the heiress of Kendal to Gilbert, son of Roger Fitz Reinfred, a judge of the King's Bench, the heiress of Westmorland to William de Vipont, and the heiress of Liddel to Nicholas de Stuteville (*Victoria County History, Cumberland*, i. passim ; Nicolson and Burn, i. pp. 31, 266 ; ii. p. 72).

[34] *List of Sheriffs.*

[35] Stubbs, *Select Charters*, p. 22 (9th. ed.)

[36] Madox, *Hist. of Exch.* i. pp. 123 ff.

[37] De Vaux had to be removed from the shrievalty of Cumberland for extortion in 1185 (*Pipe Rolls*, 31 H. II); Ranulf Glanvil deserved the same fate (*Plumpton Corres.* p. xvi).

instruments of royal tyranny. When Magna Carta at last put an end to the system, its work was already done. The Itinerant Justices, who had been instructed by the Assise of Northampton (1176) to hold the pleas of the crown in the honors as in the shires, had been enabled by the executive power vested in them as sheriffs to force the lords of the honors to admit them to exercise jurisdiction within their liberties.[38] The king's triumph was assured when men began to realise that he could offer to those who came before his Justices a more rational procedure and a more flexible and equitable justice than could be obtained in the courts of the honors and baronies, hampered as these were by an archaic procedure and a customary law that was ceasing to be adequate to the needs of a new age. The Lateran Decree of 1215 which prohibited the use of the ordeal as legal method of proof, and the declaration of the Provisions of Westminster that no man could be made to swear but by the king's writ, completed the ruin of the honors by reducing them almost to the level of the baronies. Still, they always retained their identity and were never wholly merged in the shires, so that down to the middle of the nineteenth century they remained outside the jurisdiction both of the shire-court and of the sheriff.[39]

Moreover there remained a group of liberties in which the king's writ did not run, their owners enjoying royal power within their bounds. All but two were ecclesiastical and closely connected with a sanctuary endowed with special privileges. At their head was the County Palatine of Durham, with its members, Norhamshire, Islandshire

[38] E.g. in 1185 the Justices visited Coupland (*Pipe Rolls*, 31 H. II).

[39] E.g. the county-court of Cumberland had no jurisdiction in the honors of Coupland and Allerdale, and certain mesne manors held under them, in which the lord of the honor had an exclusive jurisdiction (*Returns relating to Courts of Requests*, etc. 1840). So too in Yorkshire the courts of Skipton, Pontefract, Tickhill and Knaresborough had a jurisdiction identical with and exclusive of that of the county court of Yorkshire, and all writs for persons dwelling within their limits had to be addressed to their bailiffs (*ib*; cf. *Nomina Villarum Eboracensium*, (1768).

and Bedlingtonshire in Northumberland, Allertonshire and Howdenshire in Yorkshire, the nucleus being the land between Tyne and Tees given to St. Cuthbert by Guthrum. The special privileges bestowed on it by the Saxon kings, were confirmed to the Bishop of Durham by the Conqueror, who also appointed the Bishop constable of the castle and lord of the honor of Durham, thereby making the ecclesiastical immunity a great feudal liberty. Henry II had not yet won freedom in dealing with the northern honors when he confirmed (1166) to the great Hugh Puiset all the liberties of the Bishopric, and later on his relations with the Church were such that he dare not encroach on an ecclesiastical liberty. Further, Puiset and his successors were careful to keep pace with the development of royal justice, introducing into their own courts the king's judicial reforms; so their men were not tempted to resort to his courts, and the bishops retained the monopoly of the administration of justice as well as all other royal rights within their liberty.[40] Similar, though less extensive, franchises were enjoyed by the Archbishop of York in Hexham, St. Peter's of York, Beverley and Ripon, by the Abbots of St. Mary's beside York, Byland, and Whitby, and by the Prior of Tynemouth.[41]

There can be no doubt that in each of these cases the lord of the liberty was able to retain his temporal power because the liberty was also a sanctuary and so under the special protection of the Church. These northern sanctuaries were far more important than the ordinary ones which could give shelter to a fugitive for forty days only, at the end of which period he must abjure the realm. The fugitive who reached one of the great sanctuaries north of the Trent,

[40] Lapsley, *County Palatine of Durham*, p.

[41] For Hexham and Tynemouth see the *County History of Northumberland;* for the Yorkshire liberties see *Pl. de Quo War.* pp. 203 ff; *Kirby's Inquest; Rot. Hund.* i. pp. 121, 123, 129, 134; Cox's *Sanctuaries*, etc.; Poulson's *Beverlac*; Drake's *Eboracum*, p. 541; Young's *Whitby*, p. 278-9; *Fifth Report on Courts of Common Law.*

such as that of St. John of Beverley, the most memorable in England, could, if he would, remain there all his life, provided he took the oath of obedience to the authorities of the liberty. The oath once taken, he became the subject of the lord of the liberty and could not be made answerable for any crime committed beyond its bounds. Although most of the men who fled to these sanctuaries were naturally northerners, their great privileges drew to them men of all classes and from all parts of England. Very suggestive of the numbers of the Grith-men, as those who took the oath as Sanctuary-men were called, is the fact that at Beverley alone 495 men took the oath between 1479 and 1539, most of them being debtors, though no fewer than 186 were accused of homicide or manslaughter.[42]

What the Church did for the ecclesiastical immunities, nature and the Scots did for the lay liberties of Tynedale and Redesdale. That exclusive jurisdiction over his own men which every lord of an honor once had, the lords of these franchises retained to the close of the Middle Ages, partly because it would have taken a larger force than any mediaeval king of England could spare to storm the fastnesses of the Cheviots and bring the men of the liberties to justice, partly because the reckless lawlessness that set the royal justices at defiance made the men of Tynedale and Redesdale the most able keepers of the march against Scottish raiders.

It is, however, clear that the liberties, lay and ecclesiastical, made the administration of justice and the maintenance of order an exceedingly difficult task; especially as the Grith-men as well as the men of Tynedale and Redesdale were wont to sally out in bands and raid the neighbouring farms and market towns. Complaints were frequently made by the Justices of Assize; but the king was powerless so long as the thunders of the Church could hold men in awe and Scotland remained a potential enemy. Not until Henry VIII abolished 'the usurped authority

[42] Cox, *op. cit.* p. 136.

of the Bishop of Rome' were the ecclesiastical liberties brought under the control of the crown; and not until James VI of Scotland became James I of England did the men of Tynedale and Redesdale cease to terrorize the country-side.

Nevertheless, with these exceptions, the crown had fairly established its right to declare law throughout the land north of the Trent before the end of the thirteenth century; and there seemed to be no good reason why it should not win the right to execute justice also, in spite of the difficulties revealed by the *Quo Warranto* proceedings of 1274. From time to time honors and baronies came into the king's hands by escheat or forfeiture,[43] and the number was likely to increase under the new law of entail. The break-up of the others was proceeding apace,[44] and the process was certain to be hastened by the working of the statute *Quia Emptores*, which gave greater facilities for the division of estates, multiplied the tenants-in-chief of the crown, increased the number of socage tenants, and stopped the creation of new manors.

It was by the revival of the Scottish danger that the advance of the power of the crown north of the Trent was again checked. The war that began in 1295 and continued almost without intermission for over a century put on the English Treasury an intolerable strain. The sense of national unity and responsibilty was as yet embryonic; and Parliament, in which northern interests were poorly represented, persisted in treating the defence of the Marches as a purely local affair. The feeling was that the nation had

[43] As the honor of Lancaster in 1224, the barony of Dunstanburgh in Northumberland on Simon de Montfort's death in 1265 (Bates, *Border Holds*, p. 169), and the barony of Dalston in Cumberland by the felony of H. FitzMaurin (Bain, ii. No. 146).

[44] E. *g.* the barony of Wooler had passed to coheirs by 1269 (*Northumberland Assize Rolls*, p. 73), and the baronies of Hephal and Gaugy by 1278 (*ib.* pp. 327, 356). Of course, it was only the lands of the barony that were partitioned, the barony itself being impartible; but partition always lessened the power of the holders to resist royal encroachment.

done enough when it had remitted to the northern counties their share of direct taxation.[45] Thrust back on its own resources, the crown found men for the Border service where and how it could; with the result that before the death of Edward II the indenture system with its attendant evils of livery and maintenance had been firmly established. At the same time, barony was added to barony and office to office in order that the Marches might be kept, until by the end of the fourteenth century most of the land north of the Trent had passed into the hands of three men.[46] The Duke of Lancaster owned the County Palatine of Lancaster and the honors of Tickhill, Knaresborough, Pontefract, and Pickering, besides scattered baronies and manors in all the northern shires;[47] Henry Percy, Earl of Northumberland, was lord of nearly a hundred baronies and manors in Yorkshire, of Alnwick Castle, Alnedale, Coquetdale, and South Tynedale in Northumberland, and of the honors of Allerdale and Coupland in Cumberland;[48] Ralph Neville, Earl of Westmorland, was lord of Brancepeth and Raby in Durham, of Middleham and Sheriffhutton in Yorkshire, of Bywell, Bolbeck, and Mitford in Northumberland, and of Penrith in Cumberland.[49]

The wealth drawn from these vast estates was the least advantage derived from them by their owners. Owing to the dearth of money north of the Trent, even the richest of the northern barons was comparatively poor; so that though there were great lords in the North, they had no money to advance to others.[50] In the fourteenth century,

[45] The Parliament Rolls contain many petitions from the northern shires for the remission of taxation in consideration of the burden imposed on them by their proximity to the Scots, and in the subsidy acts of the sixteenth century a clause was always inserted for their exemption.

[46] 'The Office of Warden of the Marches', pp. 490-2.

[47] Armitage-Smith, *John of Gaunt*, pp. 217 ff.

[48] Dugdale, *Bar. Angl.* i. p. 269; de Fonblanque, *Annals of the House of Percy*, i. p. 511; *Cal. of Pat. Rolls*, 1405-1408, p. 40.

[49] Dugdale, *op. cit.* i, p. 291-2; Humberston's Survey.

[50] *L. & P.* vii. No. 1206; cf. *Trans. R. Hist. S.* xx. p. 196

however, a great noble like the Duke of Lancaster or the Earl of Northumberland maintained a state only a little less than the king's, and his household and estates required an economy of management and an administrative organisation as elaborate as that of the kingdom itself.

In the household were the lord's Chancellor, his Treasurer of the Chamber, his Treasurer of the Household, his Surveyor and Receiver-general, his Auditor, his Almoner, and his Cofferer; his Steward of the Household, his Comptroller, and his Clerk of the Kitchen; his Attorney and his Solicitor; his Secretary, his Clerk of the Signet, and his Pursuivant; his Chamberlain, Vice-chamberlain, Gentlemen Ushers, Sewers, and Carvers; his Butler and his Master Cook, with their staffs; his Constables, Serjeants-at-arms, his Heralds, Minstrels, and Players; his Master of the Game, his Falconers, Huntsmen and Grooms; his Purveyors, etc. His estates were managed by the Chief Stewards who held his courts, the Receivers who collected his revenues, and the Feodars who had charge of his fees and franchises; but he needed also Foresters and Keepers for his chaces and parks, Constables for his castles, Captains for his retinue, Stewards and Bailiffs for his baronies and manors, Priests for his chapels and chantries and for the livings in his gift, besides hundreds of humbler officials.[51] In truth, a great lord might not know half his servants, they were so many.[52]

Controlling the whole administration of both household and estates was the lord's Council, a definite and formal body of personal or official advisors who assisted him in the management of his private affairs and attended him when he had anything like public business to conduct. It included, besides the chief officers of his Household — the Chancellor, the Steward, the Chamberlain, the Comp-

[51] *Northumberland's Household Book*; Armitage-Smith, *op. cit.* ch. x and *John of Gaunt's Register*, pp. xi-xv; *Inventories of the Wardrobes of the Duke of Richmond* etc.

[52] *Plumpton Corres.* p. 232.

troller, the Receiver-general, and the Treasurer — a number of 'unofficial' members, among whom the most important were the lawyers, his Stewards, his Attorneys in the king's courts, and especially his learned Counsel. It was not only that their services were indispensable in an age when 'legal chicane was one of the most regular weapons of offence and defence, and to trump up charges, however frivolous, against an adversary, one of the most effectual means of parrying inconvenient charges against oneself'.[53] While the Council was primarily an administrative board, much of its work was of a quasi-judicial, sometimes of a wholly judicial, character. There came before it numerous questions arising out of the relations between the lord and his tenants, all agreements for service and reward between the lord and his retainers, the petitions of aggrieved tenants, complaints against the lord's officers, appeals from his courts;[54] and as time went on, the importance and scope of the Council's work increased rather than diminished, so that even the Justices of the King's Bench did not disdain to be of counsel with such a lord.[55]

The power of one of these lords was in fact derived less from his wealth than from the amount of patronage, administrative and judicial, that was at his disposal simply as a seigneur, the lord of scores of baronies and manors; and it is no wonder that while the gentry of the North sought in the service of Lancaster, Percy or Neville a career and a livelihood for themselves and their sons, men of rank and wealth were willing to serve them as they served the king, receiving in their service the training that made it possible for 'men like the Earl of Arundel of Henry V's time . . . to be called to the office of Treasurer at a moment's notice'[56]. Often, indeed, such service was

[53] Plummer, *Fortescue's The Governance of England*, p. 31.

[54] *John of Gaunt's Register*, passim.

[55] In 1354 Parliament complained that the judges were too often found in the retinues of great lords (*Rot. Parl.* iii. p. 200).

[56] Stubbs, *Const. Hist. Eng.* iii. p. 558.

but the king's service in disguise. For, to the power of great seigneurs the northern nobles added that of royal officials, monopolising the offices of Warden of the Marches and Justice of the Forest, of the Peace, of Gaol Delivery, and of Oyer and Terminer, as well as those of Constable of the royal castles, Keeper of the royal forests, and Steward of the royal honors.[57] As their deputies or associates in these offices were naturally chosen from among their own retainers and councillors,[58] their favour was the surest road to high office in State and Church; so all the ablest and most ambitious men were drawn into their service and wore their badge and livery.[59]

[57] Doyle's *Official Baronage*, and *Calendars of Patent Rolls*, passim.

[58] When Edward IV made Northumberland Constable, Steward and Master-Forester of the Castle, Lordship and Forest of Knaresborourgh in 1471, the Earl made his brother-in-law, Sir William Gascoigne, his deputy (*Plumpton Corres.* p. lxxv. lxxvi). Sir Robert Plumpton, afterwards deputy in the same offices, was steward of Northumberland's lordship of Spofforth as his father, Sir William, had been (*ib.* p. xcix; *Testa. Ebor.* iii. pp. 75-6, 310). Roger Lascelles, his successor at Spofforth, was also steward of Topcliff and captain of Norham as well as a member of the Earl's Council (*L. & P.* iv. No. 5706; *Northumberland's Household Book).* Sir Thomas Wharton, 1st Lord Wharton, who won Solway Moss and ruled the West March for many years, began his career as Lieutenant of the honor of Cockermouth and Comptroller of the Earl's Household (K. R. Misc. Rooks, 37; *L. & P.* v. Nos. 367, 411, 434; vi. No. 16). As for the office of Justice of the Peace, it is enough to quote the following passage from a letter written to Sir William Plumpton by Godfrey Greene *circa* 1475: 'Your Maistership may remember how long it was or we might speed your bill of Justice of the Peace; and had not my Lord of Northumberland been, had not been sped for all the fair promises of my Lord Chamberlaine. And as for the message to my Lord Chamberlain, what time I labored to him that you might be Justice of the Peace, he answered thus; that it seemed by your labor and mine, that we wold make a jelosie betwixt my Lord of Northumberland and him, in that he shold labor for any of his men, he being present. Sir, I took that for a watche word for medling betwixt Lords' (*Plumpton Corr.* p. 33).

[59] The position and influence gained by John of Gaunt's retainers is notorious. Lords Latimer and Neville, the Chamberlain and Steward of the Royal Household, impeached by the Good Parliament in 1376, Sir Thomas Hungerford, the Duke's Steward, Speaker of the Commons in the parliament of 1377, Michael de la Pole, 1st Earl of Suffolk and Lord Chancellor, all wore the Duke of Lancaster's Collar of SS, as did the poets Chaucer and Gower (Armitage-Smith, *John of Gaunt*, App. iii; A. P. Purey-Cust, *The Collar of SS*).

In any age such power and influence would have made its possessor the real ruler of the land in which it lay, if only because to dismiss one of these great lords from his offices was to change the governance high and low of a whole country-side;[60] but especially was it so at a time when the bow and spear reigned supreme as the only weapons of warfare. The knights, esquires and yeomen who wore the livery of one of these magnates were fighting-men one and all; and it was among them that he found garrisons for the strongholds in his custody and raised troops for service in Scotland or France. Even in the sixteenth century, although the fighting strength of the North had been sadly lessened by the Wars of the Roses, the Earl of Northumberland was able to accompany Henry VIII to France in 1513 with 500 men all drawn from his Yorkshire estates; while in Cumberland 1500 men rode against the Scots or stayed at home at his bidding.[61] Provided with horse and armour and trained in the hard school of Border warfare, the tenants of such a lord formed as fine a body of fighting-men as could be desired, always ready to take their lord's pay and go forth to fight and to plunder either beyond the Tweed or beyond the Trent.

In the circumstances, it is not surprising that the governance not of the North only but of all England passed into the hands of over-mighty subjects who used their position in the Council, their interest with the Church, their influence in Parliament, their control over the Bench, and their monopoly of local government, simply to further their own interests and carry on their own feuds, making the Crown itself the sport of faction. It is true that the over-mighty subject was a necessary factor in our political development. Controlling Parliament, he did not fear to make it strong to coerce the King; deriving his authority over

[60] *Twenty-six Political and other Poems*, ed. Kain (Early English Text Soc.) i. p. 10.

[61] *L. & P.* iv. pt. 1. No. 278; *Antiq. Repos.* iv. p. 350-1; de Fonblanque, *op. cit.* i. pp. 335, 552.

his neighbours from a royal commission, he was ready to extend that of the Crown; drawing from his own resources the power to enforce the royal commission on which his authority rested and dependent on the interested good-will of his followers for its continuance, he established the principle that 'the sovereign authority must act through a local medium; it cannot itself take in hand the business of local government'.[62] It was he who taught the nation that the king exists for the kingdom, not the kingdom for the king; 'for the preservation of the laws of his subjects, of their persons and goods, he is set up, and for this purpose, he has power derived from the people so that he may not govern his people by any other power'.[63] The whole theory of the English constitution, in fact, is involved in the position of such an over-mighty subject as the Earl of Northumberland, who owed his power to his wealth and the interested good-will of his adherents, but his authority to the king. Even the concentration of authority in the hands of such lords was an advantage; for when the Crown at last wrested their power from them, it found that the checks imposed by feudalism or the free exercise of its authority had all been swept away. But until that time came, these over-mighty subjects were a standing menace to the peace of the land; for north of the Trent, where men knew no other prince but a Percy or a Neville,[64] 'the olde good-wyll of the people, deepe-grafted in their harts, to their nobles and gentlemen',[65] enabled these same nobles and gentlemen to set the power of the Crown at naught even in the sixteenth century. To establish that power in the farthest corner of the land was the task of the Tudors; until it should be accomplished, the problem of the North must baffle all the efforts of kings and statesmen to maintain order in England.

[62] Redlich and Hirst, *English Local Government*, i. p. xxv.

[63] Fortescue, *De Laudibus*, c. 13, p. 347.

[64] Hunsdon to the Privy Council, 31 Dec. 1569; *For. Cal. 1569-71*, No. 568.

[65] Sharpe, *Memorials of the Rebellion of 1569*, p. x.

CHAPTER II.

The Justices of the Peace in the North Parts.

The fourteenth century saw the making of the problem of the North as it confronted the Tudors; the fifteenth saw the first efforts to solve it.

Nowhere was the influence of the over-mighty subject, for good as for ill, shewn more clearly than north of the Trent at the beginning of the fifteenth century. There, the governance of the land was in the hands of three men—the Duke of Lancaster, the Earl of Northumberland and the Earl of Westmorland; and of these, the Duke had just been made King of England by the help of the other two. Such services had to be paid for; and two months after Henry, Duke of Lancaster, became 'by lygne and free eleccion.... verray kynge', the Earl of Northumberland was made Warden-general of the Marches against Scotland, Governor of Berwick, Constable of all the royal castles, Justice of all the Forests, and Justice of the Peace in all the shires north of the Trent, Lord of the Isle of Man, and Constable of England.[1] Beside the offices and honours heaped on Northumberland, his son, and his brother, Westmorland's reward for loyalty seemed small indeed; Henry did but give him his own sister to wife, grant him the honor of Richmond for life, make him Justice of the Peace in Cumberland, Westmorland and Yorkshire, and appoint him Earl Marshal.[2]

Little more than three years later Henry IV learnt that

[1] *Rot. Scot.* ii. p. 152; *Cal. of Pat. Rolls, 1399-1401,* pp. 537, 562, 565-7; *G. E. C.*

[2] Dugdale, *Bar. Angl.* i. pp. 297-8; *Cal. of Pat. Rolls, 1399-1401,* pp. 557, 565-7.

the subject who places the crown on his own head gives himself many rivals. The Percies, moved by private grudges rather than public grievances, rose in revolt and entered into league with the enemies of England to make Hotspur's nephew, the Earl of March, king in Henry's place. The risings of 1403 and 1405, dangerous as they were, were easily put down through the prompt action and unscrupulous treachery of Westmorland. Then all the lands and offices of the Percies passed into the hands of the king,[3] and thence into those of his son John and his brother-in-law Westmorland. The latter received the honors of Cockermouth and Coupland, and was made Warden of the West March, Justice of the Forests, and Justice of the Peace in all the shires north of the Trent; all the rest of the Percy inheritance went to the former, who was made Warden of the East and Middle Marches, and Justice of the Peace in Northumberland and Yorkshire.[4]

The sign and seal of the power of the new rulers of the North was clearly the Wardenship of the Marches, which gave them command of the only forces of the Crown that were always under arms; and it is tempting to see in that office, as Mr. Lapsley has done,[5] the basis of their authority as well in Yorkshire as in the March shires. But examination shews that the authority of the Wardens as such was strictly confined to the Marches, and even there was subject to important limitations arising out of the nature and origin of their office.

The Wardenship of the Marches in fact grew out of the necessities of the war with Scotland that began in 1295.[6] Down to that time, the defence of the March shires and the execution of the March Laws, by which the intercourse of English and Scots along the March was regulated, had lain in the hands of the sheriffs.

[3] Vesp. F. vii. f. 24, a letter from Henry IV to his Council.

[4] *Rot. Scot.* ii. p. 164; *Cal. of Pat. Rolls, 1405-1408*, p. 19, 495, 499 f.

[5] 'The Problem of the North', *Amer. Hist. Rev.* v. pp. 440-466.

[6] The account of the Wardenship here given is summarized from the present writer's 'The Office of Warden of the Marches: its origin and early history', *E. H. R.* xxxii. pp. 479 ff. where full references are given.

But the need of entrusting the defence of the frontier to professional soldiers led Edward I in 1296 to issue a commission appointing 'captains and keepers of our peace' in the county of Cumberland. At first issued only when need arose, the commission had to be renewed again and again until the Warden of the Marches, known by that name from 1309, became a permanent official. The original, and to the end the chief, duty of the Warden was to defend the March against the Scots; and the earliest commissions merely gave him power to array all able men of the March and the adjacent shires and lead them to the Border. But as time went on, other powers were added until in its final form, attained in November, 1399,[7] the commission of the Warden of the Marches gave him full authority, within liberties as without, to call out the fencible men of the March for its defence, to hold Warden-courts, to punish disobedience to his orders, to keep the truce with the Scots, to receive into the king's allegiance all who came in, to grant safe-conducts, especially to those seeking justice under March Law, to meet the Scots Warden on the March for the redress of wrongs, to make a truce with the Scots for any period up to two months without consulting the king beforehand, and to appoint deputies under his own seal. It also gave him full control, not only over his own subordinates, but also over all military and civil officials in the March shires, as well as over all the king's lieges of whatsoever degree, in all matters in which he had jurisdiction. In short, he had all the powers necessary to the military governor of a frontier district.

Nevertheless, great as his powers were, the Warden was far from having 'general civil powers', including 'a kind of high police jurisdiction through which the March shires 'were to a certain extent withdrawn from the jurisdiction of the common law'. As a matter of fact, he had jurisdiction only when there had been some breach of military discipline, of the truce, or of the Laws of the Marches, none

[7] *Rot. Scot.* ii. p. 152.

of them being an offence known to the common law. Among the king's subjects the Warden could not, without a commission of oyer and terminer or of the peace, punish felony or even a breach of the peace unless it were combined with March treason.[8] 'The Warden hath none authority to meddle in any cause there, but only of attemptates whereof the Scots be parties, or done in Scotland by Englishmen, or in England by Scotsmen'.[9]

Even in the matters within his jurisdiction, the Warden's authority was subject to certain very clear limitations arising from the circumstance that without exception the duties of his office had simply been taken over from the sheriff. Thus, even in the March shires he could exercise it directly through his own officials only where the sheriff might enter, this is being the March proper. Like the sheriff, he could not enter an honor to arrest a man even for an offence over which he alone had jurisdiction; he could only order the lord to produce him, and if he failed to do so, make him redress the wrong the man had done.[10] Even in the important matter of arraying the king's lieges, he could summon the men of an honor only through the lord, and if he or his bailiff did not call them out, they stayed at home.[11] In conequence of this limitation, the West March, being the March of Cumberland and Westmorland, was no more than the valley of the Eden from Penrith to Carlisle; whereas the East March, being the March of Northumberland, included nearly the whole shire. Tynedale, Redesdale, Hexham and Norham, in which the king's writ did not run, were, of course, not part of the shire at all; and there is reason for believing that the Warden of the East March never had any authority in them until they, together with Durham, were specially included in a commission issued in 1346 to the Wardens, the Archbishop of York and the

[8] *L. & P.* xxiii. pt. 1. No. 964.

[9] *Ib.* xii. No. pt. 1. 595.

[10] *Cal. of Border Papers*, i. No. 273; cf. *Rot. Scot.* i. p. 794.

[11] *L. & P.* iv. No. 278.

Bishop of Durham jointly. Then in 1362 the Wardens alone were directed to keep the truce in Tynedale, Redesdale, Hexham, Norhamshire and Bedlingtonshire as in the rest of Northumberland; and when the last Umfraville Earl of Angus died in 1381 Tynedale, Redesdale and Hexham with part of Northumberland lying west of the high road from Newcastle to Roxburgh were formed into the Middle March, the East March being reduced to the part of the shire lying between the high road and the sea.[12] As both Marches were usually given to the same Warden and each of the liberties had a Keeper of its own through whom the Warden had to act,[13] the change was little more than one of name. As a matter of course, the Warden, like the sheriff before him, had no authority whatever outside the March shires. The words of the commission really make this quite clear; but any doubt that may have existed on the point was finally removed by a statute made in 1453 imposing heavy penalties on any who should attach men for March treason in Yorkshire or anywhere else outside Northumberland, Cumberland, Westmorland and Newcastle.[14]

It is clear, therefore, that although the Warden's commission might be the sign and seal of the power of the ruler of the North, it could not be the basis of his civil authority even in the Marches. That he did have such authority is certain; but it is equally certain that he had it in virtue, not of his commission as Warden, but of the commission to keep the peace that was directed to him with others of the shire in which his March lay.

The first purpose of the commission to keep the peace was to secure a threatened shire from attack by rebels or raiders;[15] and it was only through the break-down of the system by

[12] *Rot. Scot.* i. pp. 670, 862; ii. p. 40.

[13] *L. & P.* 3. Nos. 1460, 5906; xii. pt. 1. Nos. 249, 250.

[14] 31 H. VI c. 3; cf. Welford, *History of Newcastle*, i. p. 331.

[15] E.g. in Devon in 1232 (*Cal. of Pat. Rolls, 1232-47*, p. 292), in Cumberland in 1296 (*ib. 1292-1301*, p. 185), and in the shires along the Welsh March in 1297 (*ib.* p. 301).

which the Crown had kept control over the administration of law and justice in the shires that it became part of our system of local government. That control, which the Angevin kings had secured through the sheriff and the justice in eyre, had been slowly giving way during Henry III's reign and at last broke down under the strain of the Barons' War. When Edward I returned from the last Crusade, he found that the frankpledge system had broken up ; [16] that the sheriff, who should have kept the peace, was so much hampered by the baronial immunities that he was almost powerless to deal with the swarms of vagabonds who leagued themselves together to commit depredations by night and were hired by others to maltreat and kill other men in fairs, markets and other places ; [17] that, as the Itinerant Justices now visited the shires only at long intervals, royal justice was almost in abeyance over a great part of the country ; [18] that even the jury system was threatening to break down ; [19] and that in consequence crime was steadily increasing and making a record often 'so ghastly as positively to stagger one'.

Edward and his advisers tried hard, but failed, to revive the old system. The baronial immunities being the chief bar to the restoration of order, inquiries were made as to their nature and extent ; but in face of the resentment of the whole baronage, the king had to be content with a compromise very much in the nature of a defeat, which left the existing franchises untouched, only preventing the creation of new ones without his leave. Finding that he could not destroy feudalism, Edward determined to take it into partnership. The lords of franchises and their bailiffs were made equally responsible with the sheriffs for ensuring peace and defence ; [20] and then by means of commissions to inquire concerning vagabonds and their re-

[16] Morris, *The Frankpledge System*, pp. 151-155.
[17] *Cal. of Pat. Rolls, 1301-1307*, pp. 193, 352.
[18] Morris, *op. cit.* p. 154 ; cf. *Northumberland Assize Rolls*, passim
[19] Preamble to Statute of Winchester.
[20] Ib. cl. 6.

ceivers, to arrest and do justice on them, to deliver the gaols, to hear and determine all criminal pleas, all of which were free from the restrictions imposed by the Charters on the power of the sheriff and the justice in eyre, the frequent administration and due execution of royal justice were gradually secured, even in the most distant shires.

Few of these commissions were quite new; but to Edward I and his advisers belongs the credit of elevating government by commission into a system which proved to be amazingly flexible and capable of adaptation to the most diverse needs. Its efficiency depended, however, on the ability of the Crown to secure the due execution of justice within liberties as without. In Edward's own reign there seems to have been little difficulty in this; but it was different in his son's. The baronial reaction that then set in led to the rapid growth of disorder, especially in the March shires, which became a prey to bands of marauders, English as well as Scottish, who made raids from the liberties by day and by night, committed robberies, imprisoned people till they made ransom, went to fairs and markets and took goods without paying for them, beat those who would not be of their party, and way-laid merchants. [21] More and more often, commissions to keep the peace had to be issued, not for the March shires only, but for every county in England. At last, Parliament, under pressure of the circumstances in which Edward III became king, made a statute that in every shire good and lawful men should be assigned to keep the peace and the Statute of Winchester. [22] Henceforth, the keeper of the peace was a permanent part of the machinery of local government in England.

Within the next thirty years, disorder was enormously increased by the Black Death and the economic and social troubles that it brought in its train; and when the conclu-

[21] *Cal. of Pat. Rolls, 1301-1307*, p. 193; *ib. 1324-1327*, p. 228. Cf. *County Hist. of Northumberland.* viii. p. 86.

[22] 1 Ed. III st.2. c.16.

sion of peace with France and Scotland in 1360 threatened to flood the country with thousands of men trained to disorder and rapine in the evil school of foreign war, the famous statute was made that transformed the Keepers of the Peace into the Justices of the Peace. [23]

The opening clause is worth quoting, as upon the authority conferred under it was based the whole structure of English local government as built up during the fourteenth and fifteenth centuries and perfected in the sixteenth. It runs thus: "First, that in every county of England there shall be assigned, for the keeping of the peace, a lord and with him three or four of the most worthy of the county, together with some learned in the law, and they shall have power to restrain malefactors, riotters, and all other 'barettors' [24] and to pursue, arrest, take, chastise them according to their trespass or misprision; [25] and to cause them to be imprisoned and to duly punish them according to the law and customs of the realm, and according to what they shall see best to do by their discretion and good counsel; and also to inform themselves and to enquire of all those who are pillagers and robbers in other parts, and now come and go as vagrants, and will not work as they were accustomed in former times, and to take and arrest all those whom they can find by indictment or by suspicion and put them in

[23] 34 Ed. III st. 1. c. 1.

[24] 'Common barretry is the offence of frequently exciting and stirring up suits and quarrels between his majesty's subjects either at law or otherwise'; Blackstone, *Commentaries*, iv. p. 134.

[25] 'Misprisions, (a term derived from *mespris*, a neglect or contempt) are, in the acceptation of our law, generally, understood to be all such high offences as are under the degree of capital, but nearly bordering thereon'; *ib.* iv. p. 119. Blackstone gives five positive ones, generally denominated contempts or high misdemeanours: i. Maladministration by public officers; ii. Contempts against the King's prerogative; iii. against his person and government (including seditious words); iv. his title; v. his palaces or courts of justice. All of these were punishable by fine and imprisonment at the discretion of the judges. It is interesting to note that they are just the offences with which the Court of Star Chamber was largely occupied.

prison, and take of all those [26] who are of good fame wherever they shall be found, sufficient surety and mainprise for their good behaviour.... and also to hear and determine at the King's suit, all manner of felonies and trespasses done in the same county, according to the laws and customs aforesaid'.

The commission issued under this statute was comprehensive enough to enable the Justices of the Peace to deal at any time and in any place within the county with all classes of offenders, including those who disturbed the peace, laid violent hands upon property or committed serious crimes such as murder, rape, and arson. The authority of the Justices also extended to inquiry into all offences against the Statute of Winchester, and obliged all sheriffs, constables and bailiffs to attend their orders and execute their decrees under penalty for disobedience. Henceforth, no bailiff of a liberty could, under pretence of defending his lord's right, stand between a criminal and the law.

The commission, in effect, transferred to the Crown the whole of the coercive power which had hitherto belonged to the feudal lords ; and it is safe to say that such a reform could have been carried through without resistance in no other circumstances than those of the fourteenth century, when the northern franchises were concentrated in the hands of a few men who, secure from interference in their own liberties, were willing to accept a royal commission allowing them to interfere in their neighbours'. [26a] The framers of the statute certainly recognised this when

[26] For an interesting account of how 'non' crept into later copies of this statute and the important consequences of the change, see Crump and Johnson, 'The Power of Justices of the Peace', *E. H. R.* xxvii. pp. 226 ff.

[26a] In 1377 the Lancastrian House of Commons which undid the work of the 'Good' Parliament of 1376, petitioned that the Justices of the Peace should not be allowed to enquire into any matter over which the franchises of lords and towns extended, that they should be limited to the guardianship of the peace and the enforcement of labour statutes, and that for the easement of the people they should hold their sessions four times a year (*Rol. Parl.* ii. p. 366b).

they expressly stipulated that the great coercive power conferred by the commission of the peace should be entrusted only to men of wealth and influence in their own county. No others, indeed, could have executed the Statute of Winchester, the Statute of Labourers, or any other of the statutes against disturbers of the established order which were henceforth passed in rapid succession. Neither then nor at any time before the nineteenth century had the Justices, as such, the command of a force which would enable them to overcome resistance to their orders and decrees. The English people were no more law-abiding by nature than any other ; and in the fourteenth and fifteenth centuries, when peasants were in revolt against an outworn economic system, when discharged soldiers and able-bodied vagrants patrolled the high roads and sacked peaceful villages, when great men—and little men too—with their retainers fought out their private feuds, even in the streets of towns and cities, it was worse than useless to entrust executive power to any man who had not armed force behind him. So, with the approval and at the instance of Parliament, the local government of England passed into the hands of 'the most sufficient and valiant in the county. [27]

Very soon the Justice of the Peace became 'the State's man-of-all-work'. It was an age of disintegration. The manorial organisation was breaking up, municipal authority was

[27] Prynne, *Irenarchus Redivivus*, p. 13, citing a petition of the Commons in the Parliament of 2 Ric. II : 'Pray the Commons, because that commissions to keep the peace in every county are directed to the lords of the County who cannot attend at their sessions and assign and associate with them others who are poor and not so sufficient who may occupy their office in their absence, who retain with them the Inditements taken of Malefactors, without sending their precepts to any sheriffs to apprehend such persons indited, by reason where of the malefactors of the County are more encouraged to do amiss, who ride in great routs as well by day as by night, making affray and marching against people in their houses or elsewhere, and beat and wound and sometimes kill and maim the poor Commons of the land ; that it should please that such poor and insufficient Justices may be removed, and that the most sufficient and valiant in the County may be assigned in their places, who will justify and make redress

decaying, the gild organisation of trade and industry was ceasing to be effective. Every year Parliament was being called upon to find substitutes for the decaying local institutions, or to supplement their failing authority. Year after year, statutes had to be passed settling wages and prices, regulating industries, legislating against petty disorder.[28] At first these new statutes had execution assigned either to sheriffs and mayors (police) or to special commissioners (trades) who were either nominated by the act or appointed by the Crown under it; but by the middle of Henry IV's reign the practice of appointing commissioners for particular acts had almost entirely given way to that of charging the Justices of the Peace with the execution of them.[29] Thus, soon after the beginning of the fifteenth century, the whole administration of the shire had passed into the hands of the Justices of the Peace. They became the fiscal board of the shire, assessing, levying and superintending the expenditure of a county rate raised for any purpose; they replaced the sheriffs as the medium of communication between the Crown and the people; and at a later time they became the regular agents of the government in its demands for purveyance, benevolences and loans, amicable or forced.[30]

To their great coercive and administrative power was added criminal jurisdiction. The statute already quoted gave the Justices of the Peace jurisdiction not only over the petty trespasses and misdemeanours dealt with in the shire and barony courts, but over all crimes however heinous, save treason only. Their sessions became a serious

of the misdoings of such malefactors, their maintainers, coadjutors, fosterers, receivers, and abettors, in maintenance of the Common Law of the Land and salvation of the Common people aforesaid'. In 1439 a statute was made that the Justices of the Peace should not be men of small fortune by whom the people would not be governed but men having £20 a year in land (*Rot. Parl.* v. p. 28).

[28] Cunningham, *Growth of English Industry and Commerce*, i. pp. 375-7.

[29] Paley, *Law and Practice of Summary Convictions*, p. xvii.

[30] Beard, *The Justice of the Peace*, pp. 56 ff

rival to the courts held by the Justices of Assize in virtue of their commission of oyer and terminer, and during the fifteenth century this commission was almost superseded by that of the peace. [31] For the Justices of the Peace had two great advantages over the Justices of Assize. The first was that, whereas the latter could act only on formal indictment by juries who, through fear or favour, often refused to indict, or on private appeal, which exposed the appellant to a heavy penalty if he failed to prove his case, [32] the former could order the arrest of a person known or suspected by them of having committed a crime. [33] The second was that the Justices of the Peace met more frequently. From the fourteenth century onwards the Justices of Assize went on circuit only twice a year, and the March shires were visited only once a year; [34] but the Justices of the Peace were required to hold sessions for indictments at least four times a year. [35] There was nothing in the statute to limit the number of sessions to four; but the inconvenience of more frequent meetings fixed the number at the statutory minimum. These were the Quarter Sessions in which the Justices empanelled juries and dealt with all kinds of felonies.

Breaches of the peace and offences that were not felonious required to be more frequently and more summarily dealt with; and it is just possible that the statute of 1360, in the direction to the Justices to take and to punish disturbers of the peace, 'according to the law and custom of the Realm, and according to what they shall see best to do by their discretion and good counsel', was intended to allow the Justices to proceed in such cases without the intervention of a jury, where life and limb were not touched. If so, the common law judges would have none of it, and

[31] Medley, *English Const. Hist.* p. 399.
[32] Blackstone, *op. cit.* iv. pp. 270, 316.
[33] Holdsworth, *Hist. Eng. Law*, i. p. 131.
[34] Blackstone, *op. cit.* iv. p. 269.
[35] 36 Ed. III c. 12.

declared that where the statutes whose execution was given to the Justices of the Peace contained no other direction as to the manner of their proceeding than what was conveyed by the expressons authorising them to hear and determine, or to examine and punish offences against the respective statutes, the Justices had only power to proceed by the common law method of inquisition and verdict. The inconveniences of frequent sessions, and the need for impanelling juries which too often gave verdicts directly against the evidence, made the alternative of allowing to two or three Justices the power of summary conviction out of sessions necessary to the effective working of the commission in cases of breach of the peace ; [36] so the necessary power was conferred by statute in the matter of forcible entries (1388), riots (1411), and labourers (1414). [37]

That the commission of the peace did not entirely supersede the commission of oyer and terminer for all crimes except treason, was probably due to the fact that it was through the commission of oyer and terminer that the King's Council habitually exercised its judicial functions in the fourteenth and fifteenth centuries, [38] and therefore guarded jealously its right to issue it. Moreover, although Parliament had frequently petitioned against the commission in the fourteenth century and insisted that the Justices of Assize should always be included in it, [39] in the fifteenth century its value was so generally recognised that in 1409 the same body actually prayed that a permanent commission of oyer and terminer should be set up beyond the Trent. [40] For this there were two reasons. In the first place, it was very necessary that there should be some means of supervising the Justices of the Peace in their administrative

[36] Paley, *op. cit.* pp. xviii-xx.
[37] 12 Ric. II c. 2 ; 13 Hen. IV c. 7 ; 2 Hen. V st. 1 c. 4.
[38] Baildon, *Select Cases in Chancery*, p. xxviii.
[39] 2 Ed. III c. 2.
[40] *Rot. Parl.* iii. p. 624.

work, and that there should be some court other than that of Quarter Sessions for dealing with offences committed by the Justices as private persons. [41] For such a purpose nothing was so suitable as a commission of oyer and terminer issued to the Justices of Assize, who were thereby enabled when on circuit, to enquire into the proceedings of the Justices of the Peace and to receive indictments against them. In the second place, the commission of oyer and terminer was a most useful weapon against disorder, and especially against revolt, enabling the Justices of the Peace to punish as well as to indict for felony and treason; so that by the end of the fifteenth century it had come to be issued to the rulers of the North as a matter of course, At the beginning of the century, however, the only permanent basis of government beyond the Trent as elsewhere was the commission of the peace.

The exact relation of the commission of the peace to the government of the North in the fifteenth century is determined beyond a doubt by the proclamation that Henry IV caused to be made in Yorkshire in 1405 on the eve of Scrope's rebellion. [42] In it the king commands that no one should assemble men of force or arms in 'routes' and companies without the express command of the king, or of John his son, Constable of England, Warden of the East March, Justice of the Peace in the North Parts (es parties del North), or of Ralph Neville, Earl of Westmorland and Marshal of England, Warden of the West March, and Justice of the Peace in the same parts. The Wardenship of the Marches might be a necessary adjunct to the government of the North, the sign and seal of the authority of the governor; but the basis of that authority was the commission of the peace, while the source of the governor's power

[41] Even in the 16th century Sir William Gascoigne, sitting on the Bench in open sessions, could tell a woman sent by her husband to require of the Justices the King's peace against him, that no man there had authority to bind him to the peace, for that he was a Justice of the Peace himself and the oldest and best there (*Yorks. Star Chamber Proc.* ii. pp. 53-4).

[42] *Rot. Parl.* iii. p. 604.

to enforce it was the vast estates with which the king had enfeoffed him.

Power so great over so large a territory could not be exercised without assistance, especially when one of the Justices of the Peace in the North Parts was so young as John of Lancaster, at this time a mere boy of sixteen. [43] Now, in the commissions of the peace for the Yorkshire Ridings is sued in December 1405, we notice that while all three contain the names of John of Lancaster, the Earl of Westmorland, Sir William Gascoigne, the Chief Justice of King's Bench, and Thomas Tildesey, one of the King's Serjeants, the Justices of Assize in the northern circuit, they also contain the names of William, Lord Roos of Hamelak, Peter, Lord Mauley, Westmorland's son-in-law, [44] and Richard Norton, a lawyer of standing who was made Justice of Assize in Durham in 1406, King's Serjeant in 1408, and Chief Justice of Common Pleas in 1413. [45] All three belonged to the West Riding, and their inclusion in the commissions for the other Ridings was probably due to their connection with Westmorland whose influence was supreme there.

It is still more interesting to find in the commissions for the North and East Ridings, though not in that for the West Riding, the names of Henry, Lord Fitzhugh, Ralph Eure, and William Fulthorpe. Lord Fitzhugh in 1399 indentured to serve Henry IV for life at 100 marks a year, and we are told that he served John, Duke of Bedford, without pay, that he represented him as Constable of England at Henry V's coronation, and that in 1414 he was made Lord Chamberlain of the Household. [46] Eure was one of the king's knights as well as one of Prince John's officers in the East March; [47] and he and Fulthorpe are said to have passed sentence of death on Archbishop Scrope when

[43] He was born 20 June 1389; Doyle, i. p. 150.
[44] Dugdale, *Bar. Angl.* i. p. 298.
[45] Foss, *Lives of the Judges*, ii. p. 208.
[46] Dugdale, *Bar. Angl.* i. p. 403-4.
[47] *Rot. Scot.* ii. p. 183; *Cal. of Pat. Rolls, 1405-1408*, p. 74.

Gascoigne refused to do so. [48] Several other members of the commissions had indentured to be the king's knights and squires, [49] among them Robert Tirwhit, the notorious Justice of King's Bench who, having laid an ambush for Lord Roos with 500 men, pleaded in extenuation that he did not know that he was breaking the law. [50] As clearly as Roos, Mauley and Norton were associated with Westmorland, Fitzhugh, Eure and Fulthorpe were connected with John of Lancaster, whose power, like theirs, was limited to the North and East Ridings and Northumberland. It can, indeed, hardly be doubted that most if not all of them were members of that Council for whose use the king, in November 1410, gave his son 'that new Tower at the entrance of the great hall at Westminster, situate next to the King's Receipt of the Exchequer'. [51]

That this was not the Council in the Marches of which we catch glimpses at the end of the fourteenth century as in the sixteenth, [52] is proved by the fact that although both Fitzhugh and Eure were employed on important March business during the time that Prince John was Warden, Eure, whose family had long been connected with the defence of the East March against the Scots, was the only Yorkshire Justice of the Peace included in the commission for Northumberland. [53] Indeed, it could not be otherwise; for the Council in the Marches, in which Mr. Lapsley has seen the forerunner of the Council in the North, [54] was composed of March officials whose sole business it was to aid the Warden in the discharge of his duties, [55] and its presence in the March was constantly required.

[48] Stubbs, *Const. Hist. Eng.* iii. p. 52-3.

[49] *Cal. of Pat. Rolls, 1405-1408*, pp. 152, 229, 359.

[50] Foss, *op. cit.* ii. p. 367; *Rot. Parl.* iii. p. 649.

[51] *Cal. of Pat. Rolls, 1408-1413*, p. 265.

[52] *Rot. Scot.* i. p. 940; *Foedera*, vii. p. 425; *Proceedings & Ordinances of the Privy Council*, ii. p. 142; *L. & P.* iv. Nos. 3689, 3795.

[53] *Cal. of Pat. Rolls, 1405-1408*, p. 495, 499f.

[54] *Op. cit.*

[55] E. g. in 1354 the Keepers of the Truce in the East March were Henry Percy, Ralph Neville, William Greystoke and John Coupland (*Rot. Scot.*

There is, however, no need to go to the Marches to seek the Council that aided John of Lancaster to govern the North; for this was just the Council that assisted him in the management of his estates and in the discharge of his public duties. Westmorland must have had a similar Council, and although there was as yet nothing that we can call a Council in the North, it seems clear that in every shire beyond the Trent there were associated with the Justices of the Peace in the North parts some members of their Councils, and in Yorkshire at least an attempt was made to associate the Councils of both Justices in the work of government. Much remained to be done before there could be established a single Council in the North governing in the king's name and on the king's behalf only; but when that day came, the Council's powers were essentially the same as those of the earlier governments, the commission of the peace remaining the basis of the government of the North. [55a]

The fact that the North had been placed under a separate administration was emphasised by the addition of other commissions to the commission of the peace from time to time as need arose to strengthen the hands of the Justices. Thus, in March 1406 a commission was issued to John of Lancaster, Westmorland, Fitzhugh, Eure and the sheriffs of Yorkshire, Northumberland, Westmorland and Cumberland to inquire into a report that many of the king's subjects had assembled in the North, and on pretext of going to Wales to fight against the rebels were travelling

i. p. 772), of whom Percy and Neville were the two Wardens (*ib.* p. 751), Greystoke the Captain of Berwick (*ib.* p. 767), and Coupland the sheriff and constable of Roxburgh (*ib.* p. 718). In Sept. 1367 they were the Bishop of Durham, the Earl of Warwick, the Earl of Angus, Henry Percy and his son, Peter, Lord Mauley, Thomas Grey, Richard Tempset, Roger Widdrington and John Bolton (*ib.* p. 915). Of these, Angus was lord of Redesdale, Percy was joint Warden with Neville (*ib.* p. 906), his son was Surveyor of castles in the East March and Scotland (ib. p. 911), Mauley was Captain of Berwick (*ib.* p. 912), Grey was Constable of Norham (*ib.* p. 920), Bolton was Chamberlain of Berwick (*ib.* p. 995), and Widdrington was sheriff of Northumberland.

[55a] See commission to the President of Council in 1530; App. IV.

thither by night to aid them.[56] When commissions were issued in June, 1406, for raising a loan[57] and for inquiry into all sums due from the sheriffs and other accountable officers of the king, extortions by the king's ministers, and the value of the Crown lands;[58] those for the East and North Ridings included both the Justices of the Peace in the North parts. In the same month Westmorland and John of Lancaster were directed to arrest all rebels from time to time and put them in safe custody,[59] and in August 1407 to inquire about unlawful conventicles and congregations north of the Trent, and if necessary, array the lieges for the chastisement of the offenders.[60] At the same time a commission of oyer and terminer during pleasure was given to the Justices, with Sir William Gascoigne, Sir Ralph Eure, Sir Richard Redman, and Sir Thomas Rokeby, concerning all treasons, insurrections, rebellions and felonies in the same parts.[61] Three years later, at the request of Parliament a special commission of oyer and terminer was issued directing the Justices to do justice, as well at the suit of the king as of a party, on the authors of the rumours and riots 'perpetrated from one day to another against the crown, the peace, and the law' north of the Trent.[62]

The North nevertheless remained disaffected, and even after the death of the old Earl of Northumberland in 1408, the efforts of his adherents, aided by the Scots of the Merse and the men of Tynedale, Redesdale and Hexham, to restore the Percies and their blood to rule over them, kept the North in a turmoil. So in 1414 a couple of statutes were passed making it high treason to break the truce or to

[56] *Cal. of Pat. Rolls. 1405-1408*, p. 229.
[57] *Ib.* pp. 199-201.
[58] *Ib.* p. 155; this was the commission of inquiry of offices.
[59] *Ib.* p. 152.
[60] *Ib.* p. 359.
[61] *Ib.*
[62] *Rot. Parl.* iii. p. 624.

receive truce-breakers, and declaring the goods and lands of the men of Tynedale and Hexham forfeitable on conviction or outlawry. But all was in vain ; and at last Henry V was convinced that the only way to pacify the North was to restore to young Henry Percy his grandfather's lands and offices, or at least some of them. So, as he was bent on seeking glory and fortune in France, he agreed to exchange the Scottish Regent's son for Hotspur's, and bought back from his brother John the Percy lands in Northumberland and Yorkshire.[63] The conspiracy discovered at Southampton in July 1415 for making the Earl of March king and restoring Percy with the aid of the Scots, although it delayed the exchange, only confirmed Henry in his determination to effect it. At last was this done ;[64] and in February 1416 Percy was handed over to the English ambassadors at Berwick. While there, he married the King's cousin Eleanor, daughter of Westmorland and Joan Beaufort ; and rumour had it that when the earldom of Northumberland was restored to him in March, it was at the instance of his mother-in-law. The restoration of his lands followed. Then in March 1417 he was made Warden of the East and Middle Marches, and ere long he became Justice of the Peace in Northumberland, Cumberland and Yorkshire.[65] Henceforth, the Percies and the Nevilles as Wardens of the Marches and Justices of the Peace in the North parts, ruled the land beyond the Trent between them, until their feuds plunged first the North and then all England into civil war.

[63] *Proc. & Ord. Privy Co.* ii. pp. 160-4 ; *Cal. of Pat. Rolls, 1413-1416*, p. 370.

[64] *Foedera*, ix. p. 300.

[65] *Rot. Scot.* ii. p. 221 ; *Cal. of Pat. Rolls, 1416-1422*, pp. 451, 457, 462-3.

CHAPTER III.

The King's Council in the North Parts.

Contrary to what might have been expected, the Wars of the Roses left the government of the North practically unchanged. Both Lancastrians and Yorkists had drawn their fighting strength from beyond the Trent, and although the Lancastrian cause fell when the power of the Percies was broken at Towton, the victory won there gave the control of the North, not to Edward of York, but to the Nevilles. For ten years the Earl of Warwick and his brother John, endowed with the Percy lands and created Earl of Northumberland in 1464, ruled the land beyond the Trent as Wardens of the Marches and Justices of the Peace and of Oyer and Terminer in the North parts.[1] Therefore, when Edward IV became aware in 1469 of the Nevilles' growing discontent, he could meet the danger in no other way than

[1] Warwick, who already had Middleham, Sheriffhutton and Barnard Castle, received Cockermouth in 1465; he was made Warden-general of the East and West Marches, 31 July 1461, Lieutenant in the North, 6 Nov. 1462, Special Commissioner and Justice of Oyer and Terminer in Northumberland, 21 Nov. 1462, Justice of the Peace in the Bishopric of Durham, 12 Feb. 1463, Warden of the West March, 1 June, 1463, Chief Guardian of the Truce with Scotland, 11 June 1464, and Warden, Chief Justice and Justice in Eyre of the Forests beyond the Trent, 21 Nov. 1466. John Neville received Alnwick, Langley and Prudhoe, and was made Special Commissioner and Justice of Oyer and Terminer in Northumberland and Newcastle 21 Nov. 1462, Chief Steward of the Bishopric in Durham, Sadbergh and Bedlington, 20 Jan. 1463, Justice of the Peace in the Bishopric, 1 Feb., 1463, Warden of the East and Middle Marches, 1 June, 1463, was created Earl of Northumberland, 27 May 1464, and was made Chief Guardian of the Truce with Scotland, 11 June 1464, and Sheriff of Northumberland for life (Doyle, *Official Baronage*). Wressell was given to John., 11 July, 1468 (*Cal. of Pat. Rolls, 1460-1476*, p. 91).

by making Robin of Redesdale's rising a pretext for releasing Henry Percy from the Tower and restoring to him his earldom and lands in order that the might hold the North against them.[2] It was already too late, and Edward was driven into exile; but his action was justified when he returned, for Northumberland's influence kept the North quiet while he himself was fighting and winning the battles of Barnet and Tewkesbury.[3]

For a moment it seemed that Edward would reward Northumberland by concentrating the government of the North in his hands as his Lieutenant; for he made him Warden of the East and Middle Marches, Governor of Berwick and Bamburgh, Constable, Steward and Master Forester of the castle, lordship and forest of Knaresborough, and Justice of the Forests beyond Trent,[4] and sent him 'into the North there to reside for the more peaceable government of those parts'.[5] But he had no mind to allow the Percies to take the position from which he had just ousted the Nevilles; so his brother, Richard of Gloucester, was sent to join Northumberland in governing the North. To this end, lands and offices were heaped upon him. Already Warden of the West March (1470),[6] he soon replaced Northumberland as Warden and Chief Justice of the Forests beyond Trent (May, 1472), and was made Steward of Ripon, Sheriff of Cumberland for life, and High Steward of the Duchy of Lancaster north of the Trent, as well as Justice of the Peace in Yorkshire, Cumberland and Westmorland.[7] He was already lord of Middleham and Sheriffhutton when he married Anne Neville and through Edward's favour obtained the full half of Warwick's lands as her dowry.[8]

[2] Leland, *Collectanea*, i. p. 500.

[3] *The Restoration of Edward IV*, (Camd. Soc.) p. 6-7, 32-3.

[4] Doyle; *Plumpton Corres.* p. lxxv-lxxvi; *Materials for the Reign of Henry VII*, ii. p. 54.

[5] Dugdale, *Bar. Angl.* i. p. 282.

[6] *Rot. Scot.* ii. p. 423.

[7] Doyle.

[8] Dugdale, *op. cit.* ii. p. 163.

To these were added Scarborough Castle, Skipton-in-Craven and Richmond in 1475, and by exchange with Sir Thomas Roos, Helmsley or Hamelak in 1478.[9] Lord also of Lonsdale, Kendal, Cockermouth and Penrith, which with the West March, — of which he was now herditary Warden — were formed into a County Palatine for him in 1482,[10] Gloucester was soon the greatest landowner as well as the most important official north of the Trent.

Nevertheless, ten years more were to elapse before even the first step could be taken towards replacing the two Justices of the Peace by a single King's Lieutenant in the North. The relation between Gloucester and Northumberland was in fact clearly determined by an agreement entered into by them before the King and his Council at Nottingham on 12 May 1473, that the Duke would neither accept nor retain into his service any servant or servants that had at any time been in the service of the Earl.[11] Next year, it is true, the Earl indentured (28 July 1474) to be the Duke's servant to do him all lawful service, saving only his duty to the King, the Queen and the Prince of Wales, the Duke undertaking to be the Earl's good and faithful lord at all times and to sustain his right against all persons; but even then the Duke had to renew the earlier agreement and also to undertake that he would not ask or claim any office or fee that the Earl had of the King or anyone else, nor interrupt him or his servants in the exercise of any such office.[12]

The agreement thus made was faithfully observed throughout Edward IV's reign; and down to 1482 all commissions, even of the peace, shew clearly that Gloucester's authority was limited to Yorkshire, Cumberland and Westmorland,

[9] *Rot. Parl.* vi. pp. 124-5, *Cal. of Pat. Rolls, 1476-1485*, p. 90; Davies, *York Records*, p. 47.

[10] *Rot. Parl.* vi. p. 204.

[11] Indenture between Gloucester and Northumberland in 1474, preserved in the muniment room at Syon House (V. ii. 28), and printed by de Fonblanque, *Annals of the House of Percy*, i. p. 549.

[12] *Ib.*

Northumberland's to Northumberland and Yorkshire; moreover, in Yorkshire, in commissions other than those for the peace, only Gloucester's name appears in commissions for the West Riding and only Northumberland's in those for the East Riding.[13] Only in 1482, when war with Scotland broke out, was Gloucester made sole King's Lieutenant in the North and so given precedence of Northumberland everywhere beyond the Trent.[14]

This change was accompanied by another of great moment. Both Justices had of course always been assisted by their councils in the discharge of the their duties; indeed, while Gloucester and Northumberland were with Edward IV in France in 1475 their councils had exercised nearly the whole of their authority.[15] But they had not yet been brought together in one commission, even for the whole of Yorkshire. In 1482, however, on the eve of the departure of Gloucester and Northumberland for Scotland, there was issued for Yorkshire a commission of oyer and terminer for all criminal offences committed in that county, which was directed to the Duke of Gloucester, the Earl of Northumberland, the Baron of Greystoke, Sir Francis Lovell, Sir John Scrope of Bolton, Sir Thomas Brian, Sir Guy Fairfax, Sir Richard Choke, Sir Richard Nele, John Catesby, Richard Pigott, Sir William Parre, Sir James Harrington, and Miles Metcalf.[16] Of these, the Baron of Greystoke and Lord Scrope were not only Gloucester's own cousins[17] but also members of his council;[18]

[13] *Cal. of Pat. Rolls, 1476-1485*, pp. 50, 112, 183.

[14] *Cal. of Pat. Rolls, 1476-1485*, p. 205.

[15] Davies, pp. 41, 50.

[16] *Cal. of Pat. Rolls, 1476-1485*, p. 343.

[17] Their mothers were sisters, daughters of the first Earl of Westmorland, and half-sisters of Cicely, Duchess of York, Richard's mother; Lord Dacre of Gilsland was the son of another sister (Dugdale, *Bar. Angl.* i. p. 282). In 1483 Richard made Scrope Chamberlain of the Duchy of Lancaster (Harl. 433, f. 24), Greystoke got an annuity of £100 (ib. No. 377), and Dacre, who was his cousin's deputy in the West March, (*Cal. of Pat. Rolls, 1476-1485*, p. 213-4) and Lieutenant of Carlisle (Harl. 433. f. 175b), one of 100 marks (ib. No. 522).

[18] Davies, pp. 41, 73.

Lovell was his closest friend and Chamberlain of his Household;[19] Parre was the Steward of his barony of Kendal and a member of his council,[20] as was Harrington.[21] All the others were lawyers, Brian being Chief Justice, and Fairfax and the Justices of Assize in the northern circuit; and Brian Nele was probably a legal member of Gloucester's council[22] as Fairfax certainly was of Northumberland's.[23] The relations of Choke, Nele and Catesby to the Duke and the Earl are not clear; but Metcalf, who succeeded Fairfax as Recorder of York[24] on the latter's elevation to the Bench in 1477,[25] was probably a member of Gloucester's council as he certainly was of Northumberland's.[26] Pigott too seems to have been in Gloucester's service; for in 1476 he was employed in some of the affairs of the city of York

[19] *G. E. C.*

[20] *L. & P.* v. No. 951; Davies, p. 73.

[21] He had been made Seneschal of Pontefract in 1478 and he was attainted after Bosworth (*Plumpton Corres.* p. 48; Hunter, *South Yorkshire*, ii. p. 402-3).

[22] Experience gained as a member of Gloucester's Council would best explain the opinion on the rights of copyholders to which he gave utterance in this very year; see p. 57.

[23] Northumberland, in his will made 27 July, 1485, willed 'that Sir Robert Constable, Sir Thomas Metham, Sir William Eure and Sir Guy Fairfax be paid their fees during their livers, they doing service to his heirs as they have done to him' (*Test. Ebor.* iii. p. 310).

[24] Davies, p. 61.

[25] *Ib.* p. 53; Foss, v. p. 48. In 1483 Guy Fairfax was made Chief Justice of Lancaster; at the same time, Miles Metcalf was made a Justice of Lancaster, Thomas Metcalf was made Chancellor and Keeper of the Seal of the Duchy and the County Palatine, and their father, James Metcalf, was made Coroner of the Marshalsea of the King's Household and Master Forester of Wensleydale, Rydale and Bishopsdale, as a reward for the help he gave Richard in gaining the Crown (Harl. 433. ff. 22b, 28b). Both Thomas and Miles lent Richard money, apparently for his dash on London in 1483 (ib. Nos. 1535, 2105). A pardon was granted to Thomas and Miles Metcalf, 29 Nov. 1485 (*Materials* etc. i. p. 187). Thomas afterwards bought Nappa in Craven (Whitaker, *Richmondshire*, i. pp. 406-8).

[26] York House Books, v. f. 4b; he was buried 29 Feb. 1485/6. Northumberland was very anxious that the Mayor and Corporation should choose his Councillor, Richard Greene, as Recorder in his place (ib. f. 7),

for which Richard's interest had been sought and granted,[27] and about the same time he was engaged against Fairfax.[28]

It is clear that during the absence of the Duke and the Earl from Yorkshire the government of the county was left in the hands of the most experienced members of their private councils. Officially, of course, the government of Yorkshire was in their hands as the King's commissioners, and their connection with Gloucester and Northumberland was ingnored. Yet there can be no doubt that it was just this connection that determined their selection as the King's Justices' of the Peace and of Oyer and Terminer. They were the King's servants because they were the Duke of Gloucester's or the Earl of Northumberland's, and their public powers and duties were hardly to be distinguished from their private ones. For the time being, the confusion between the royal and the seigneurial sources of the authority of the High Commissioners, as Gloucester and Northumberland were now called,[29] and their Councils, worked against the interests of the Crown ; and had Richard never become king, it is most likely that the County Palatine created for him in 1482 out of the counties of Cumberland and Westmorland would have become as dangerous to the peace and unity of the realm as the Duchy of Lancaster and the Earldom of March had already been. As it was, Richard's usurpation of the Crown and the subsequent forfeiture of his lands transferred all his power to the Crown and transformed his Council into the King's

while the King asked them to choose Thomas Middleton (ib. f. 11) ; but on 24 March, 1486 they elected John Vavasour, serjeant-at-law (ib. f. 13), who had been Receiver of Skipton and Carleton under Richard III (Harl. 433. No. 2076).

[27] Davies, p. 53. Pigott, 'a great and wealthy lawyer', was a grandson of Sir Randolph Pigott of Melmorby. His sister Joanna married Sir John Conyers, or Norton, of Norton Conyers, famous as Robin of Redesdale (*Test. Ebor.* iii. p. 156), and his own wife was Jane, daughter of Sir Richard Welles, Lord Willoughby, (*North Country Wills*, i. pp. 71, 73).

[28] *Plumpton Corres.* p. 35.

[29] Davies, p. 126.

Council, with the result that what had been a private, became a public, institution.

Before this happened, a very important change had taken place in the character of the government of the North. As we have seen, that government was called into being to keep the peace and it was the special duty of the King's High Commissioners as it had been of the Justices of the Peace in the North Parts to repress riots which, if unchecked, might become revolts. The very success of their administration soon made this the least part of the work that fell to them and their Councils. For the decrease of disorder arising from insurrection and civil war threw into sharp relief the steady increase of chronic disorder arising, partly from lack of governance, partly from the deficiencies of the law.

Both evils were of long standing, though it was not till the fifteenth century that they rose to such a height as to bring the administration of justice almost to a standstill. In that age all men did homage to 'Meed the maid'; and although there were great judges, they were with few exceptions corrupt, and many were in the pay of great lords and gave sentence as these directed.[30] Trial by jury might be a safeguard against oppression by royal officials, but it was of no avail against oppression by a man's neighbours; and the juries were so easily corrupted by fear or favour that it was the hardest thing in the world to get a verdict against a great lord or any man 'well kinned and allied'.[31] No ordinary law-court could cure these and their parent evils, livery and maintenance; and the King's Council was more and more urgently called on to exercise that extraordinary criminal jurisdiction which was in 1487

[30] Stubbs, *Const. Hist. Engl.* iii. p. 279 nn. 6, 7; cf. *Paston Letters* for many illustrations.

[31] This was quite commonly urged in Yorkshire Star Chamber cases as a reason for asking that a case should be taken out of the usual course of trial by jury; e.g. *Yorks. Star Chamber Proc.* i. Nos. xiv, xxxii, lv, lxxxi; ii. Nos. xiv, xxxiv, lii.

confirmed to it by the act which vested that jurisdiction in the Court of Star Chamber.

A still more fruitful source of outrage and disorder was the inadequacy of the common law to the needs of the age, whereby the poor were placed at the mercy of the strong. It was a time of rapid change. Old social relations and habits were giving way ; new ones were not yet formed. Customary law was ceasing to be adequate to the needs of a new age ; and the slow transformation of economic and social life was creating new problems which the old courts could not deal with. The common law had hardened in the hands of professional lawyers into a premature fixity and precision and had become 'incapable of devising rules to govern the transactions of a changing society'. The tentative efforts of Parliament to amend the common law by legislation at first served only to introduce confusion where there had at least been clearness and precision ; and there was hardly a transaction of ordinary life which could not be made the occasion of lengthy and costly legal proceedings.[32] Even comparatively rich men deemed it wiser to submit to wrong than to embark on a suit which might land them in the debtor's prison.

Even more than the facility with which common law procedure lent itself to abuse by the litigious and the malicious, the refusal of the common law courts to suit themselves to the changes which were taking place in the opinion and circumstances of society, was the cause of much hardship and unmerited wrong ; and early in the fourteenth century the King's Council began to supplement the jurisdiction of the common law courts, laying the foundation for the common law as well as the equitable jurisdiction of the Chancellor.[33] The common lawyers bitterly resented the action of the Council, and again and again persuaded Parliament to forbid the special commissions of oyer and terminer which were at that time the favourite device of

[32] Holdsworth, *op. cit.* ii. pp. 394-7, 503.

[33] Kerly, *History of Equity*, Ch. 3.

the Council for executing its judicial functions,[34] as well as to petition against the assumption, or rather the resumption, of those functions by the King's Council. But 'the common law courts were not at any time sufficient for the needs of the country, and the existence of civil rights which they were incompetent to protect was, even in the infancy of the present courts, fully recognised';[35] so during the fifteenth century the Chancellor's jurisdiction grew steadily until at its close we meet the fully developed Court of Chancery.

Men did not, however, wait for that consummation, but sought remedy for the law's defects where and how they might. Some turned to the ecclesiastical courts; but their justice was as costly and long-drawn out as that of the common law courts, and jealousy of the Church was already a marked feature of English social life. The greater number therefore turned rather to the barony and manor courts. These, in spite of the centralisation of justice that had been going on, had retained a good deal of civil and even petty criminal jurisdiction, especially north of the Trent, where the infrequent visits of the Justices of Assize, the distance from the courts at Westminster, and the expense of royal justice, combined to preserve the local courts from extinction. Thus it was that the barony and manor courts there retained even to the nineteenth century [36] jurisdiction over all cases, except those concerning land, in which the king was not concerned and the amount at stake did not exceed 40s. in value. Subject to these limitations they were able to deal with all kinds of personal actions, contracts, trespass, libel, slander, assault, and some cases such as defamation and breach of warranty of title, for

[34] Baildon, *Select Cases in Chancery*, p. xxviii.

[35] Kerly, *op. cit.* p. 20, 59.

[36] *Fifth Report of the Commission appointed to enquire into the Proceedings and Practice of the Courts of Common Law*, 1833, and the *Return of Hundred Courts*, 1839. Of 55 Hundred Courts then existing in England and Wales 27 were in Northumberland and 2 in Yorkshire.

which the king's courts provided no remedy before the middle of the sixteenth century.[37]

Moreover, it must be remembered that it had been customary since the thirteenth century to appoint as stewards trained lawyers.[38] So there were infused into baronial justice the principles of the common law, while the presence of the country knight and the yeoman at the side of the professional lawyer kept the law administered by the barony courts elastic and flexible even when the royal courts had ceased to administer justice on equitable principles. 'Technical difficulties did not stop them from applying that which seemed the obvious remedy in any given case'.[39] The rough yet substantial justice done by these courts left them without a rival in some branches of the law they administered, until the Court of Chancery and the Council in the North arose to bring royal equity within the reach of the poorest.

All these courts, however, were more or less open to some obvious objections. Their jurisdiction was too limited in point both of local extent and, especially after the rise of prices began, of amount. Many cases could be removed by the defendant into the higher courts without giving security. The judges, being suitors of the court, were generally incompetent. The courts had no efficient ministers to serve and execute process, and many abuses were occasioned by the execution being entrusted to improper agents for whose misconduct no superior was responsible. The courts were also hampered by want of sufficient process to compel an appearance, or the attendance of witnesses, and by the use of complicated proceedings which remained open to formal and clerical objections as the successive statutes of Jeofails applied only to the superior courts.

[37] Holdsworth, i. pp. 41, 62—3, 71 ; ii. pp. 318 *ff.*

[38] *Ib.* i. p. 71, where a case is cited in which the post was offered to a man who had been a royal justice ; *cf.* Pollock & Maitland, *Hist. Eng. Law* i. p. 590.

[39] Holdsworth, ii. p. 321.

Above all, there was no appeal from their decisions to any other court.

During the fourteenth and fifteenth centuries, however, most of these defects could be, and were, made good by the lord's council. Complaints against the officers of the seigneurial courts, appeals against the verdicts and sentences given by the courts, pleas for pardon or respite, bills against fellow-tenants, quarrels between tenants and retainers, all these came before the council as a matter of course; and the skilled lawyers and shrewd men of affairs who served a great lord soon found themselves acting as a court of appeal and equity.[40] Even questions of freehold came before them;[41] but here the common lawyers intervened, and in 1391 Parliament enacted that no one should be made to answer for his freehold before the council of a lord, and that anyone aggrieved by being forced to answer before a lord's council for any matter determinable at common law should apply to the Chancellor for redress.[42] It is, however, noteworthy that the statute gave no authority to the common law courts to interfere with the work of a lord's council, and that it applied only to matters determinable at common law. It placed no restrictions on the power of a lord's council to exercise jurisdiction in

[40] *John of Gaunt's Register*, Nos. 1106, 1165-7, 1294, 1421, 1552, 1640-1; *Plumpton Corres.* pp. 34, 38, 45, 73, 75-6.

[41] *John of Gaunt's Register*, No. 1004.

[42] 15 R. II c. 12. 'Item a la grevouse compleint des communes fait au plein parlement de ce que plusours liges du Roi sont faitz venir devant les conseilx de diverses seigneurs et dames a y respondre de lour frank tenement et de plusours autres coses reales et personeles que deveroient estre determesnez par la ley de la terre encontre lestat et droit de notre seigneur le Roi et de sa corone et en defesance de la commune ley; accordez est et assestuz que nulla lige du Roi desore enavant soit arretez compellez ne constraint par nulle voie de venir ne dapparoir devant le conseil dascun seigneur ou dame pur y respondre de son frank tenement ne de nulle autre cose reale ou personele appartient a la ley de la terre en ascune manere. Et si ascun se sent grevez en temps avenir encontre ceste ordeinance et accorde, sue al Chancellor qi sera pur le temps et il en ferra remede'. 6 R. II c. 2 added a penalty of £60.

appeal, or in equity where there was no remedy at common law; even when there was such remedy the council could still act if both parties agreed to abide by its award.

Now, there were two cases in particular in which the failure of the common law courts to meet the needs of the age and the ability, if not the authority, of the lord's council to supply the defect, were equally obvious. During a time of rapid commercial and industrial expansion, it was frequently more important to be able to compel a man to fulfil a contract into which he had entered than to obtain damages from him for breaking it; yet the common law courts were powerless to order specific performance of a contract.[43] When the Court of Chancery was firmly established, the power possessed by it of ordering specific performance brought it a large proportion of its business;[44] and in the fourteenth and fifteenth centuries the readiness of the manor and barony courts to apply this remedy contributed greatly to their vitality.[45] Here the ability of the lord's council to enforce among the lord's tenants and retainers specific performance, whether ordered by a barony court or by itself, is too obvious to require illustration.

The second case is analagous to the first. In the twelfth century, when leasehold tenure was just coming into notice, the common law judges had refused to admit that the tenant for term of years had 'seisin' so as to be able to bring real

[43] Kerly, pp. 88, 147, quoting a note added by Brooke to the report of the case in 21 H. VII which decided that *assumpsit* should lie for non-performance of a contract: 'By this he will get nothing but damages, but by subpoena the Chancery can compel him (the defendant) to convey the estate, or imprison him, ut dicitur'. The action of *assumpsit*, a form of the action on the case, was allowed under Ed. III and Ric. II for breaches of contract by malfeasance, but not extended to breaches by nonfeasance till 21 Hen. VII (Kerly, p. 87). By this action the common law courts were able to cover almost the whole field of contract (Holdsworth, iii. p. 348); but they remained subject to the limitation given in the text.

[44] Kerly, pp. 147, 253.

[45] Holdsworth, i. pp. 71, 112; ii. p. 321.

actions. They had since gone so far as to admit that he had something more than a personal right of action against the landlord on the covenant; but as yet he could recover only damages, not the property itself. Not until the close of the fifteenth century was it allowed that the action of *ejectio firmae* could be used to recover possession of the land. Even so, such actions could not be taken before the Justices on circuit except by *Nisi prius*, and as a rule had to be followed at Westminster.[46] Now, the economic changes in progress during the fourteenth and fifteenth centuries were tending to reduce tenures to three categories — freehold, copyhold and leasehold;[47] and of these, the last was the tenure by which the largest number of people held their land, and these the people to whom the use of the land was more valuable than damages for ejection — the small farmers who were replacing the tenants by service of an earlier date.[48] Here again the inflexibility and inadequacy of the common law compelled the leaseholder who was too poor to seek relief from Chancery to turn to his lord's council, which, if it had not the authority, at least had the power, to eject the intruder. There could, however, be no doubt about the authority as well as the power of a lord's council to give relief to copyholders; for in the fifteenth century, unfree tenure was only just being taken under the protection of the courts, and the rule still held that if ousted the copyholder and the customary tenant had no other remedy but to sue the lord by petition.[49]

For the judicial functions thus assumed by or thrust

[46] *Ib.* i. p. 117; iii. pp. 180, 492—3.

[47] *Ib.* ii. p. 487. Strictly speaking, leasehold was not a tenure at all, but an estate (Maitland, *Const. Hist.* p. 36; Holdsworth, ii. p. 492).

[48] Cunningham, *Eng. Ind. and Comm.* i. p. 405, citing the statute of Labourers, 12 Ric. II cc. 3-7; Holdsworth, iii. p. 173.

[49] Cunningham, i. p. 71; ii. pp. 493-4, citing Littleton, Sec. 77: — 'It is said that if the lord do oust them, they have no other remedy but to sue to their lords by petition; for if they should have any other remedy they should not be said to be tenants at the will of the lord according to the custom of the manor'; cf. Fitzherbert, *Abstract.* 'Faux Jugement',

upon the council of a great lord in consequence of the delay, substantial injustice, or inadequacy of the common law as it stood even at the close of the fifteenth century, there was perhaps little legal warrant, save in the case of the copyholder, and such a council was never more than a 'court of requests'. Nevertheless, at a time when the Court of Chancery was still in its infancy, the existence of a body of highly-skilled lawyers and shrewd men of affairs to whose decision disputes might be referred, must have been a real boon, especially in the remoter parts of the country. There can be no doubt that it was because they met such needs as these that the Bishop of Durham's council acquired its equitable jurisdiction, and the Duke of Lancaster's council became the Chancery Court of the Duchy of Lancaster. These councils, like that of the Duchy of Cornwall, have retained their jurisdiction to the present day; but in origin they differed not at all from the council of the Earl of March or that of the Earl of Northumberland, although these have long since disappeared.

Useful and necessary as these councils were, they suffered from certain limitations and drawbacks. Their jurisdiction was limited to their lords' territories; and although they might arbitrate by consent between men who were not their lords' retainers or tenants, it was quite impossible for them to interfere between a landowner and his tenants, however tyrannical he might be, unless he were in some way bound to their lord. Moreover, it was impossible that they should escape the reproach so often cast at the judges of the king's courts while they held their places during pleasure, that they sacrificed law and justice to interest

pl. 7, Thirning and Cheriton agree with Rykell that, 'Vous naver autre remedy en ces cas mes de suer al seigneur que ad le franc tenement par peticion' . The first interference of the government in the relation of lord and copyholder came from the Chancery in Henry VI's reign, the earliest case cited being 4 Feb. 17 Hen. VI (Holdsworth, iii. p. 176, citing Savine in *E. H. R.* xvii. pp. 296-303). Littleton, it must be remembered, wrote in 1475.

and favour. For these defects the only remedy was an appeal to the King's Council. Yet distance and cost often combined to place the remedy beyond the reach of those who needed it most; and a reform which should establish royal courts of equity in the outlying part of the kingdom was urgently required.

To effect such a reform would have been a very simple matter. For nearly two centuries the King's Council had carried out its judicial functions through commissions of oyer and terminer;[50] and a commission to hear and determine all trespasses and breaches of the peace, and all causes between party and party, was all that was needed to establish in any given district a court exercising the extraordinary criminal and equitablejuris diction of the King's Council itself. Yet, so far as the evidence goes, no attempt to effect such a reform was ever made by the Lancastrians.

It would indeed have been too much to expect of them. Ruling as they did by a parliamentary title, the Lancastrian kings were unable to escape the control of Parliament. Their reigns were therefore regarded in after years as the Golden Age of parliamentary government. Parliament, however, represented only the baronage and the gentry, whose interest it was to exalt their own power at the expense of the classes beneath them, and who were concerned, not to diminish the power of the Crown, but to direct it in their own interest. Their control of the purse made this easy. Forced to 'live of their own', the Lancastrian kings had to depend on the unpaid services of their supporters, both for the defence of the realm and for the work of local government. They were, therefore, powerless either to check the evil system of livery and maintenance or to do justice to the oppressed at the expense of interest. At the same time, alliance with the Church made them half-unwilling champions of its rights and property, opponents of the revival of learning, and persecutors of Lollardy. Thus their rule alienated from them,

[50] Baildon, *op. cit.* p. xxviii; Kerly, p. 41-2.

not only those who were left at the mercy of powerful neighbours, the lesser gentry, the petty traders, the craftsmen and the peasants, but also the more enlightened and progressive knights and merchants whose travels had brought them under the spell of Renaissance culture.

The Yorkists, on the contrary, finding that Parliament would not give them immediate possession of the Crown, asserted the principle of legitimacy and denied the right of Parliament to alter the succession. Attacking the authority of Parliament, they had to seek the support of the unenfranchised classes; so that their own needs made them the champions of the common people. At the same time, their sympathy with the culture of the Renaissance brought them into touch with the ever-growing number of merchants, scholars and lawyers who were impatient to cast off the bonds of outworn custom. To all of these it was clear that the land was suffering from lack of governance; and what they sought was a king strong enough to govern, one who could protect the poor and weak against the rich and powerful, and by the reasonable exercise of his prerogative would remedy the law's deficiencies and injustices.

So far as the South was concerned, it was easy for the Yorkists to do what was expected of them; because there they found a large and wealthy middle class, economically independent of the great landowners, which preferred order to liberty, and good government to self-government. For without commerce and industry there can be no middle class; without order there can be no commercial and industrial expansion; and without a strong government there can be no order. North of the Trent, however, where towns were few and small, the middle-class was poor and insignificant. Practically, there were only two classes, the lords and the commons; the social organisation was wholly rural; and poverty secured the economic dependence of gentle and simple alike on a few great lords. As there was little in common between the Yorkists with their

legitimist theory of monarchy and their absolutist tendency in government, and the Lancastrian gentry with their aristocratic ideals of an elective kingship and self-government, the former could win the North only by gaining the support of the unenfranchised masses.

Conceivably, they would have failed had it not been that just about this time the forces which had broken up mediaeval society in the South, began to make themselves felt in the North. The prices of wool and hides, almost the only marketable products of the North, were beginning to rise under the influence of the enormous output of silver from the German mines. Land, especially pasture land, was beginning to rise in value. Arable land and common wastes were being enclosed; and the more unscrupulous landlords were ousting their tenants-at-will and raising the gressoms that their customary tenants paid at every change of lord or tenant. Slowly perhaps, but surely, these things would turn into bitter hatred the old good-will of the people to their lords.

Here was the opportunity of the Yorkists. The Lancastrian judges had decided that against arbitrary eviction or unreasonable fines tenants-at-will and customary tenants had no remedy but to sue their lords by petition. For their Yorkist successors to reverse this decision was contrary to the tradition of English law; but it is significant that Littleton added to his account of the land law, published in 1475, the dictum that 'the lord cannot break the custom which is reasonable in these cases'.[51] Chief Justice Brian, a member of the commission of oyer and terminer set up to govern the North in 1482, went farther when he declared in that very year 'that his opinion hath always been and ever shall be, that if such a tenant by custom paying his services be ejected by the lord, he shall have action of trespass against him' (Hil. 21 Edw. IV).[52] The form in which this opinion — which was not incorporated into

[51] Littleton, *Tenures*, Sec. 77

[52] Coke, *Littleton*, p. 60b

Littleton till 1530 — was expressed indicates that Brian felt himself opposed to general belief;[53] but there is some reason for thinking that it simply reflected the practice of Gloucester's Council. The customary tenure prevalent in the North made it easy for an unscrupulous landlord either to evict his tenants or to exact unreasonable fines from them; and we cannot doubt that Gloucester's Council, like those of other northern lords, had before it many a tenant-right case. If it dealt with them as did the Council in the North in the next century, it must have upheld the rights of the tenants who paid their services, and restrained landlords from exacting unreasonable fines. If it did so, we can easily understand how Gloucester won the love of the common people beyond the Trent, which was to stand him and his in such good stead.

Richard did not reserve his favour for the victims of economic change. In his Council he offered good and indifferent justice to all who sought it, were they rich or poor, gentle or simple. The Records of York and Beverley shew that the governors of these and other towns were encouraged to turn to the Duke's Council whenever they were in a difficulty. Disputes between the Mayor and Council and their fellow-townsmen, between the town and a neighbouring landowner, between one town and another, all were laid before the High Commissioner and his Council for advice and aid.[54]

From time to time also, commissions were issued to the High Commissioners and some members of their Councils to examine and arbitrate on particular cases, as in May 1482 when they were called upon to arbitrate between Sir Robert Plumpton and the heirs general of Sir William Plumpton.[55] Nevertheless, no permanent commission to

[53] Ashley, *Econ. Hist.* i. pt. 2. pp. 278-9.

[54] Davies, passim.

[55] *Plumpton Corres.* p. lxxxix. The other arbitrators were Sir William Parre, Sir James Harrington, Sir Hugh Hastings, John Vavasour, Robert

deal with all causes between party and party north of the Trent seems to have been issued during Edward IV's reign, and the credit for this most necessary reform belongs wholly to Richard III.

It was in the light of the experience gained during his High Commissionership that Richard set about the organisation of the government of the North shortly after he became king in 1483. At first indeed his usurpation of the crown made no difference there. The Council which must have been left in household with Prince Edward at Middleham,[56] probably continued to take its share in the government of the North, for some of its members were included in the commissions of the peace issued in Dec. 1483;[57] but it was only when Richard was drawn north by Scottish affairs in 1484 that the definite organisation of the government of the North was taken in hand. That his first intention was to follow the precedent set by Edward IV when arranging for the governance of Wales and the Marches in 1472,[58] and establish his only son as Lieutenant in the North with a Council to govern in his name, seems certain from the commissions of array bearing date 1 May 1484 that were made out for all the northern counties except Northumberland.[59] As these commissions, with the commission of oyer and terminer that usually accompanied them, were the basis of the Lieutenant's authority, it is significant that in all of them appear the names of the Prince of Wales and the Earls of Lincoln and Northumberland, in this order, Sir Richard Ratcliffe's appearing in all but that of Westmorland, of which, however, he was already sheriff for

Sheffield, William Eland, Miles Metcalf and John Dawnay; of whom, Parre, Harrington and Dawnay certainly, Vasasour and Metcalf probably, were members of Gloucester's Council, as Hastings (*ib.* p. xcvi) & Metcalf certainly, Sheffield and Eland probably, were of Northumberland's (See notes 25, 26).

[56] Davies, p. 158.

[57] *Cal. of Pat. Rolls, 1476-1485*, pp. 579 ff.

[58] Skeel, *The Council in the Marches of Wales*, pp. 18-28.

[59] *Cal. of Pat. Rolls, 1476-1485*, pp. 397-401.

life,[60] and Lord Dacre's in those for Cumberland and Westmorland. Clearly, the Prince was to take his father's place in the government of the North, with Lincoln as his Lieutenant; while Northumberland was to retain his sole rule of the East and Middle Marches. Even before the commissions were issued, however, Richard's son died (9 April 1484), and the problem of the government of the North had to be faced anew.

Hitherto the government of the North had been divided between the two Justices of the Peace, or the two High Commissioners, in such a way as to give to the one the rule of the East and Middle Marches with the East Riding and all the North Riding but Richmond, to the other, the rule of the West March with Cumberland, Westmorland, Richmond and the West Riding. In other words, one ruled the coast plains, the other the upland. This had never been a really satisfactory arrangement, the only excuse for it being the danger of allowing one man to command all the troops in the Marches; the development of the Council at Middleham into a Court of Requests for Yorkshire made it impossible. Richard therefore decided to divide the government of the North in a more natural way, giving the rule of the Marches to a Warden-general and that of Yorkshire to his own Council.

His great services in making Richard king had won for Northumberland the restoration of the first Earl's lands in Cumberland,[61] and the great influence thus gained in the Border shires marked him out as the only possible ruler of the Marches. So, on 24 July he was made Warden-general, Bailiff of Tynedale, Constable of all the royal castles in Northumberland, and Sheriff of that county for life,[62] the

[60] Harl. 433. f. 46b. No. 472. He was made hereditary sheriff, 10 Aug. 1484 (*Cal. of Pat. Rolls, 1476-1485*, p. 512), and in Oct. steward of the lordship of Wakefield and other lands of the Duchy of York (Harl. 433. No. 1055).

[61] Syon House Ms. D. l. No. 7, cited by de Fonblanque, i. p. 296.

[62] *Rot. Scot.* ii. p. 463; Harl. 433. f. 228. No. 2221.

only precaution taken against a treacherous use of his power being the retention of Dacre as lieutenant in the West March.[63] This done, Richard was free to establish the government of Yorkshire as he pleased.

Outwardly, there was no change save that Lincoln was now the King's Lieutenant, and the Council the King's Council. In reality, this one change meant that a new stage in the development of the Council in the North had been reached; for Lincoln, although heir to the Crown, had no lands beyond the Trent and had no relation to the Council there other than arose from their common relation to the king. So, although the original connection of the Council with a Household was maintained, the Household was the king's, not his Lieutenant's. Henceforth, both Lieutenant and Council, governing in the King's name, would also govern on his behalf and in his interest.

For the regulation of the Household, which was removed from Middleham to Sandal, ordinances were now drawn up,[64] consisting chiefly of directions to the Treasurer who, with the Comptroller, was ordered to submit his accounts monthly to some of the Council in residence at the time. Of these directions the most interesting is one that when "my Lord of Lincoln rideth to the Sessions, or to any meeting appointed by the Council, the Treasurer to pay for meat and drink, at all other ridings, huntings and disports my lord to bear his own costs and charges". The expenses were to be met out of fixed charges amounting to 2,000 marks a year on the king's lands in Yorkshire and Durham; but as these did not fall due until Easter the king would advance £300 from the Treasury. The Household and all in it were to be under the orders of the Council, for whose benefit indeed it was maintained.

It is round this Council and the Instructions[65] now given to it that interest centres. After a preamble stating that

[63] Ib. f. 175b; *Cal. of Pat. Rolls, 1476-1485*, pp. 213-4.

[64] Harl. 433, f. 269.

[65] Ib. f. 264b. No. 2292, printed in Ap. V (i).

'These articles following be ordained and established by the King's grace to be used and executed by my Lord of Lincoln and the Lords and other of his Council in the North Parts for the surety and wealth of the inhabitants of the same', the Instructions, or Regulations as they are here called, proceed to give general directions that no member of the Council, 'for favour, affection, hate, malice, or meed, do ne speak in the Council, otherwise than the King's laws and good conscience shall require', but shall be impartial in all things, and that if any matter comes before the Council in which one of its members is interested, that member shall retire.

Then come the important clauses dealing with administration of justice, which require quotation in full: -

(3) 'Item that no manner matter of great weight or substance be ordered or determined within the said Council unless that two of these, that is to say,—with our said nephew, be at the same, and they to be commissioners of our peace throughout these parts.

(4) 'Item that the said Council be, wholly if it may be, once in the quarter of the year at the least at York, to hear, examine and order all bills of complaints and other there before them to be showed, and oftener if the case require.

(5) 'Item that the said Council have authority and power to order and direct all riots, forcible entries, distress-takings, variance, debates and other misbehaviours against our laws and peace committed and done in the said parts. And if such be that they in no wise can thoroughly order, then to refer it unto us, and thereof certify us in all goodly haste thereafter.

(6) 'Item, the said Council in no wise to determine matter of land without the assent of the parties'.

Then follow two clauses directing the imprisonment of rioters in the nearest royal castle, or otherwise in the nearest common gaol, and commanding the Council to disperse and punish any unlawful assembly, as soon as they have knowledge of it.

The 9th clause emphasised the fact that henceforth the Council derived all its jurisdiction from the king by directing 'that all letters and writings by our said Council to be made for the due executing of the premises be made in our name, and the same to be endorsed with the hand of our nephew of Lincoln underneath with these words *Per consilium Regis*. The direction thus given was never changed, and there is among the Records of the Corporation of Hull a letter missive from the Council in the North, bearing date the 9th of March 1640, headed 'By the King' and endorsed at the end 'And by his Council', as had been commanded by Richard III more than a century and a half before. So also was the next direction continuously observed, 'that one sufficient person be appointed to make out the said letters and writings, and the same put in register from time to time, and in the same our said nephew and such with him of our said Council then being present set to their hands and a seal to be provided free for the sealing of the said letters and writings'.

The Instructions end with a mandatory clause 'to all and singular our officers, true liegemen and subjects in these North parts to be at all times obeying to the commandments of our said Council in our name, and duly to execute the same as they and every of them will eschew our great displeasure and indignation'.

Hardly less important than the Instructions are three Memoranda appended to them in the manuscript: (1) 'That the King's grace afore his departing do name the lords and other that shall be of his Council in these parts to assist and attend in that behalf upon his nephew of Lincoln'. (2) 'That the King name certain learned men to be attending here, so that one always at the least be present, and at the Meeting at York to be all there'. (3) 'That the King grant a commission to my lord of Lincoln and other of the Council according to the effect of the premises'.

It is clear that we have here no mere administrative Council. Administrative authority there still is, such as

the commission of the peace confers, but it will be exercised by way of supervision rather than by direct execution. The discharge of the ordinary administrative and magisterial duties of a Justice of the Peace is to be left to the burgesses, knights and squires, who henceforth form the majority in the commissions of the peace. Rather is the King's Council in the North a court of justice, possessing both criminal and civil jurisdiction.

The Council now established consisted of a Lieutenant, the Earl of Lincoln, assisted by a number of Councillors, both lords and others, including some lawyers who were to be of the Quorum without two of whom and the Lieutenant no matter of importance was to be ordered or determined (Art. 3). There was also a Secretary, whose duty it was to make out all letters and writings emanating from the Council and enter them in a register; probably, like his successors, he was also Keeper of the Signet (Arts. 9, 10).[66]

The Council's jurisdiction was both criminal and civil, the latter being of an equitable nature (Arts. 4, 5). It was derived from two commissions, one of the peace (Art. 3), the other giving effect to the Instructions (Mem. 3). As this commission was to confer authority to determine both criminal and civil causes, it is probable that it was a commission to hear and determine all trespasses and breaches of the peace and all cases between party and party, such as was given to the Council in the North in 1530.[67] If so, the Instructions add nothing to the Council's jurisdiction. Indeed, they were of limiting rather than enabling force; for they forbade the Council to determine matters of land without the assent of the parties (Art. 6). Nevertheless, this prohibition could easily be evaded through the power given to the Council to deal with distress-takings. For 'every question of title that might be agitated by a writ of novel disseisin might be brought forward by a writ of

[66] See p. 254.

[67] See p. 114, 281.

replevin; but with a different effect, as the latter only gave the seisin of the distress, the former the seisin of the land';[68] and as a matter of fact, many titles to real property were tried in replevin because the defendant had to set forth his title to make the distress.

The chief value of the Instructions, in fact, lies in the directions they give the Council as to the procedure it is to follow when sitting as a court of justice. In criminal causes a clear distinction is drawn between offences which are felonious and those which are simple trespasses and misdemeanours, such as the offences mentioned in Article 5, breaches of the peace, and offences, such as libel, which tended to breach of the peace.[69] The silence of the Instructions as to the procedure to be followed when felonies were dealt with implies that the Council was in such cases to follow the Common Law method of inquisition and verdict. In dealing with the second class of offences, however, the Council in the North was to assimilate its procedure to that of the King's Council in such cases, and proceed upon complaint or information by way of examination to an order or directions (Art. 5); and it is probable that the commission contained a clause enabling the Council to proceed by discretion, i.e. by examination and summary conviction, as well as by inquest and verdict.

So in civil cases, the jurisdiction of the Council being equitable and exercised in accordance with the laws of the realm and good conscience, it is to proceed as Chancery would, on bills of complaint through examination to decree (Art. 4). In all cases it has authority to order the king's subjects to obey its commands and execute its decrees as they would eschew the king's great displeasure and indignation (Art. 11); in other words, they are empowered to compel the attendance of defendants and witnesses by writ of *subpoena*.[70]

[68] Reeves, *Hist. Law*, iii. p. 83.
[69] Blackstone, iv. p. 272 n. 13.
[70] Kerly, p. 45.

The Council was to sit four times a year at York for the administration of equitable justice, when all the members were to be present (Art 4 ; Mem. 2). Criminal justice could be done at any time by the Lieutenant and two of the Quorum (Art. 3), of whom it is implied one must be a lawyer (Mem. 2).

As regards its relation with the King's Council it is clear that the Council in the North from the beginning occupied a subordinate position towards the body from whom its authority was derived, and all cases of difficulty or of great importance were to be reserved for the consideration of the superior Council (Art. 5). It must, nevertheless, be noted that, although the authority of the Council in the North was derivative, the Council itself was of independent origin. Never at any time was it in any sense what it has sometimes been called, an offshoot of the King's Council.[71] The King's Council did not create it ; it simply delegated its authority within a certain area to a body which it found already in existence.

Such as the King's Council in the North was in 1484 it remained to the end of its existence. Neither its jurisdiction nor its procedure underwent any serious modification. Such changes as came were just the changes that time brought to the Courts of Star Chamber and of Chancery, both of which were differentiated from the King's Council shortly after the first establishment of the Council in the North. Perhaps least change came in the Instructions, which, in spite of their increasing length, remained in essence simply directions as to how the Council should execute its judicial functions .

Of the membership of the first King's Council in the North we know little ; merely that the Earl of Lincoln was its official head and that the Earls of Warwick and Northumberland,[72] Lord Morley[73] and probably Sir

[71] Lapsley, *Amer. Hist. Rev.* v. p. 440.

[72] Davies, pp. 193, 210.

[73] Harl. 433 f. 269b. He was Lincoln's brother-in-law; Davies, p. 212..

Richard Ratcliffe[74] were among its members, that John Dawnay[75] was Treasurer of the Household[76] and probably a member of the Council: beyond this, nothing.

Of the Council's work we know a little more, because there are preserved in the York Records references to three cases which came before it. Two of them are not very important. In the first we see the Council acting as a criminal court. On the 17th December 1484 the Mayor of York arrested one John Stafford for coining, who confessed that he had struck coins with irons he had found at the late Earl of Shrewsbury's house of Wingfield, but set up the defence that the coins struck were French and Dutch, the uttering of which was neither treason nor felony. The Mayor thereupon wrote to Lincoln, who asked that Stafford should be sent to him. The Mayor and Council after consultation agreed that, 'the franchise of the City saved', Stafford should be sent to the Earl, on condition that after his examination, if he were condemned, he should be sent back to York for execution.[77] It does not appear how the case went; probably Stafford was acquitted.

In the second case the Council appears as a court of appeal between rival jurisdictions. This case arose out of an affray made by one of the Forest of Galtres on a citizen in Bootham. The assailant having been rescued by divers of the Forest and taken away, the Mayor and Council wrote to Warwick and Lincoln and others of the Council at Sheriffhutton asking them to send the man who made the affray back to the City to be punished according to its statutes.[78]

The third case was the most important. It arose out of

[74] His inclusion in the commissions of array in May, 1484 and Dec. 1484 makes this probable (*Cal. of Pat. Rolls, 1476-1485*, pp. 397, 492).

[75] Probably the John Dawnay whose name appears in the commissions of the peace for Yorkshire in Sept. 1484 and Feb. 1485 (*Ib.* p. 553 ff). He had been Treasurer of the Prince's Household (Harl. 433. Nos. 1918, 1925) and in April 1484 received an annuity of £40 (ib. No. 1374). During the first years of Henry VII he was constable and steward of Sheriffhutton, (Pat. Rolls 15 Hen. VII p. 2. m. 11).

[76] Harl. 433 f. 269b.

[77] Davies, pp. 200-3. [78] Ib. p. 210.

a riot that occurred at York on October 4, 1484, through the enclosure of a common pasture. Probably this was a close of the Hospital of St. Nicholas, by custom common from Michaelmas to Candlemas, which the Mayor and Council had in deference to the King's wish ordered to be enclosed for the benefit of the Hospital. The fact would explain as nothing else does the obvious hesitancy of the Mayor and Council in dealing with the situation which arose when the time came for throwing open the common. The citizens resented being deprived of their pasture rights, and, led by Roger Laton and two other gentleman, they assembled at the close and riotously destroyed the enclosure. The Mayor and Council after some hesitation decided to imprison the ringleaders and to send a man to learn the King's pleasure. Two days later, letters were sent to Richard's Secretary and his Comptroller, Sir Robert Percy, to obtain the King's favour, and at the same time Lincoln, then at Sandal, was informed of what had occurred. A week later, Percy arrived at the city with a message from his master, who, after declaring that he was willing that they should enjoy their common pasture as all other rights, reprimanded the citizens for seeking to recover their right by riotous assembly instead of laying their case before the Mayor and Council. Failing to obtain justice from these, they should then have shewn the matter to Lincoln or Northumberland, of whom if they could not have lawful redress, then they could have laid their case before the king. The commons through Laton then delivered to Percy a bill of complaint against the Mayor, whom they blamed for everything. The Mayor at once answered every article. The matter was not then settled, however, and it seems to have gone before the Council in the North; for on November 15 a deputation from the Mayor and Council carried to Lincoln at Sandal a letter missive signed with the Common Seal thanking him for his loving disposition shewn to the City in that matter.[79]

[79] *Ib.* pp. 191 ff.

Here we have the Council in the North taking action in one of those cases concerning corporate towns with which, as deriving their authority from royal charter, the Crown deemed itself to have special concern. This case, however, has a further interest in that Richard's message to the citizens of York shews that he intended the Council in the North to have exclusive jurisdiction as a court of first instance in cases arising within the limits of its jurisdiction which would otherwise have gone before the Council of State. Complaints were to be laid before the latter only when the Council in the North had failed to do justice.

Apart from its value as illustrating the place and work of the Council in the North, this case had also distinct political importance, since to an episode connected with it may be traced some at least of the discontent that detached the Earl of Northumberland from Richard's cause. Northumberland had by Richard's grants become the greatest landowner[80] and the most powerful noble, not only north of the Trent, but in England ; therefore it was very necessary for the Yorkists not to offend the head of a house noted for its pride. Yet this is just what the Mayor and Council did by omitting to write to Northumberland when they wrote to the King and to Lincoln. This was bad enough in itself, but the blow to the Earl's pride was made heavier by the fact that on the very day that the Mayor's letters were sent, Northumberland, being then at Leconfield, his chief residence,[81] sent his Secretary to York with a letter to the Mayor and Aldermen in which, after stating that he had been informed of the riot, he went on to say, 'my lord of Lincoln being in these parts, and also I, standing

[80] Besides recovering all the lands held by the Percies in 1403, Northumberland had been allowed to take all the lands he had inherited from the Poynings (Harl. 433 f. 124. No. 1570), 1 Dec. 1483 and on Buckingham's attainder he received the lordship of Holderness (ib. f. 31 No. 203).

[81] When the Mayor of York wished to communicate with Northumberland, it was invariably to Leconfield that he sent (Davies, passim).

great Chamberlain to the King's grace, I greatly marvel that ye being head governor and rulers of the said city, have neither certifyed my said lord nor me, for the which cause I send my right trusty servant this bearer unto you that I may have clear relation from you by him how the matter is indeed, to the intent that if ye be unable to sustain such honourable liberties and franchises as our said sovereign lord hath granted unto you to punish and correct the said riot, God helping, I shall endeavour me to assist you to my power for the fortification of our said sovereign's law and your said franchises'. After such a public intimation of his expectation that he would be consulted in all matters concerning the government of the county equally with the Earl of Lincoln, it must have been mortifying in the extreme to Northumberland to learn that Lincoln had indeed been informed of what had happened, while he himself had been left in ignorance.[82] It is not improbable, indeed, that this all too plain intimation that he was now inferior to the Lieutenant in the North had no small influence on the Earl's conduct at Bosworth, where his inaction went far to lose the day for Richard.

Whatever his faults, Richard III had found out how royal authority could be established in the North. It remained only for the Tudors to enter into the fruit of his labour and win the laurels he had shewn them how to gain.

[82] *Ib.* pp. 192-3.

CHAPTER IV.

The King's Lieutenant and High Commissioner in the North Parts.

After Richard III's fall it seemed that all his work in the North would perish with him. Henry VII's first concern was to secure strong government in his own interest in a province seething with discontent. Richard III had 'more loved, more esteemed and regarded the Northern men than any subjects within his realm'[1], and they repaid him with whole-hearted devotion. It is indeed probable that but for Northumberland's defection and a lying proclamation which included among those slain at Bosworth Norfolk, Lincoln, Surrey, Lovell, Ferrers and Ratcliffe, the North would have risen at once on behalf on the Earl of Lincoln. But, deceived into believing that the heir to the Crown and all the most important members of the Council in the North had perished with the king, York accepted Northumberland's lead and allowed Henry VII to beproclaimed. The deception could not be maintained for long; but time had been gained, and when the truth was known, self-interest had reasserted itself, so the North acquiesced in the rule of the *de facto* king.[2]

In the circumstances, it was a matter of course that Henry should appoint a Lieutenant to govern Yorkshire for him. His first choice fell, not on Northumberland, whom he lodged in the Tower, [3] but on Richard, Lord Fitzhugh, whom he made Constable and Steward of Richmond and Middleham and the rest of the Neville lands, lately King Richard's and now of right the Earl of War-

[1] *Hall's Chronicle*, p. 426.

[2] York Records, quoted in Drake's *Eboracum*, p. 120.

[3] Campbell, *Materials*, etc. i. p. 198.

wick's. With him were associated Lords Greystoke, Scrope of Upsall, Clifford and Lumley, Sir John Neville, Steward of the Duchy of York lands, and Sir Hugh and Sir Edmund Hastings, Stewards of the Duchy of Lancaster lands, from whom Fitzhugh was instructed to take the oath of allegiance, and to whom with other of the King's constables and stewards in the North was directed on 25 September 1485 a commission to array all men between Trent and Tweed against an anticipated invasion by the Scots, and to take oaths of allegiance from them in Yorkshire, Northumberland, Cumberland, Westmorland and Nottingham.[4] Whether or no Henry meant the members of this commission to act together as his Council in the North, there is no evidence to show; in any case this settlement of the North was upset almost at once by Fitzhugh's death in December.

[4] The commission was directed to Richard Fitzhugh, Ralph Greystoke, Thomas Scrope of Upsall, Henry Clifford, George Lumley, Hugh Hastings, John Conyers, John Savile, Edmund Hastings, Robert Rither, Henry Percy, Thomas Grey, Christopher Moresby and Ralph Bowes, knights, Richard Musgrave and the sheriff. Nearly all of these men were then, or shortly after became, officers of the King in the North. Fitzhugh was Steward, Constable and Master Forester of the lordships, castles and forests of Richmond, Middleham and Barnard Castle, 24 Sept. 1485 (*Materials* etc. i. p. 49); Greystoke was Forester of Galtres and Steward of the lordship of Laughton, 14 Nov. (*ib.* p. 162); Clifford, to whom Skipton-in-Craven and Westmorland had been restored, succeeded Fitzhugh as Chief Steward of Middleham and Master Forester of Richmond, 2 May, 1486 (*ib.* p. 420); Sir Hugh Hastings was Steward of Tickhill, 25 Sept. 1485 (*ib.* p. 550); Sir John Conyers succeeded Fitzhugh as Steward, Constable and Master Forester of Richmond, and Constable of Middleham, 4 Feb. 1486 (*ib.* p. 277); Sir John Savile was Steward and Master Forester of Wakefield and Sowerby, and Constable of Sandal, 24 Sept. 1485 (*ib.* p. 424); Sir Edmund Hastings was Steward and Master Forester of Pickering, 23 Sept. 1485 (*ib.* p. 42); Sir Robert Rither was Constable of York Castle, 4 May, 1486 (*ib.* p. 424); Sir Henry Percy was Porter of Bamburgh (*ib.* p. 423; *Cal. Pat. Rolls 1476-1485*, p. 3464); Sir Christopher Moresby was Steward of Penrith, Gamelsby and Queenshames, 30 April, 1486 (*ib.* p. 418); Richard Musgrave was one of the Receivers of Crown lands in Cumberland and Westmorland, 30 Dec. 1485 (*ib.* p. 224).

By this time Henry probably realised that only Northumberland could keep the North quiet. 'The county of York' remained 'privy fautors and comforters of the contrary part',[5] and there was much speech that they should have a ship again, of Northern men and Welshmen it was thought.[6] So the Earl was released from the Tower and in January 1486 was once more Warden of the East and Middle Marches with orders to arrest all persons spreading rumours with intent to stir up insurrection in the North parts,[7] and Justice of the Forests beyond Trent,[8] Dacre being at the same time made Warden of the West March.[9] According to Dugdale,[10] Northumberland was also the King's Lieutenant in the North Parts. No commission of Lieutenancy is now forthcoming; but the *a silentio* argument, always weak, is particularly so in this case. Not only are there no commissions to Northumberland's successors, the Earl of Surrey and the Archbishop of York, though both were certainly Lieutenants in the North for Henry VII;[11] but we know that, in November 1462 Warwick had been appointed Lieutenant in the North, 'By the King by word of mouth.'[11a] Moreover, it would have been strange indeed if, at a time when the North was the storm centre of England, Henry had not given his representative there military as well as civil authority.

Civil authority Northumberland certainly had; for the York Records shew him intervening in disputes, etc., just

[5] *Hall's Chronicle*, p. 426.

[6] *Plumpton Corres.* p. 48; cf. *Rutland Papers*, p. 8.

[7] *Rot. Scot.* ii. p. 471.

[8] This was one of the offices reserved to him by the Act of Resumption, Nov. 1485.

[9] *Rot.Scot.* ii. p. 472.

[10] *Bar.Angl.* i. p. 282. He gives 4 Hen. VII as the date, but that was the date of Northumberland's death and Surrey's appointment; either he transferred Surrey's office to Northumberland, or he confused the dates of appointment.

[11] See pp. 77, 85.

[11a] *Cal. of Pat. Rolls, 1461-67*, p. 231.

as Gloucester and Lincoln had done. But it is significant that the only Council to which reference is made on those occasions was the Earl's own Council. For instance, in November 1486 there began a dispute between the Mayor and Corporation of York on the one part, and the Dean and Chapter of the Cathedral on the other, as to the right of common in the open season of the year in certain closes near the city. When he was informed of this, Northumberland wrote to the Mayor and Aldermen urging them to let the matter rest till the next Assizes; meanwhile he and his Council would try to arrange it, for which purpose he sent his servant and Councillor, Edward Redman, to them to receive their evidence. Afterwards, Northumberland informed the Mayor that he had asked the Abbot of St. Mary's to act with Redman as arbitrator in the matter. The Mayor and Corporation had already with the consent of the Dean and Chapter chosen as arbitrators two of the Aldermen and two lawyers, of whom Redman was one. Then Northumberland sent to York his cousins, Sir Hugh Hastings and Sir William Eure, to keep the peace there and attempt a composition between the City and the Chapter; and by their advice the whole matter was referred to the Earl as sole arbitrator.[12]

Again, on 1 April 1487, the Mayor of York, on a credence shown by Roger Kolke, Northumberland's servant, imprisoned Roger Brokholles on behalf of the Earl. As no cause for the imprisonment had been shown, several Aldermen and others offered to go bail for him in £1,000. The Mayor refused to accept it; but there was so much murmuring in the city that he wrote to Sir Hugh Hastings begging him to lay these things before Northumberland and his Council, so that Kolke might be bailed or the Mayor informed of such heinous cause why he should not. Northumberland at once wrote that the cause was that Brokholles had aided and encouraged others riotously to prevent two of his servants from putting one William Were in

[12] York House Books, vi. ff. 51, 54b, 55b.

possession of the Hospital of Well in accordance with letters from the King, whereby one of them was so injured that his life was in danger. The explanation, however, came too late; for the Mayor had been forced by popular tumult to release Brokholles.[13]

These two cases shew clearly enough that at this time there was no King's Council in the North such as Richard III had set up. This was quite in accord with the traditional Lancastrian policy of consulting only the interests of the gentry and the middle-classes and ignoring those of the commons; but Henry had soon to learn that times had changed and that this could no longer be done with impunity. Short as Northumberland's Lieutenancy was — it lasted only a little over three years — it was marked by two risings in which the commons took the lead. When the Earl of Lincoln and Lord Lovell landed at Furness in June 1487 with the lad they called king, the commons of the West Riding forced the Lords Scrope of Bolton and Upsall to attack York in their interest, and the Mayor could hold the city for Henry VII only with the help of Northumberland and Clifford.[14] Then the deaths of Lincoln and Lovell at Newark and the imprisonment of the Scropes left the northern Yorkists without a leader, and so far as the gentry were concerned, opposition to the Tudors came to an end when Henry allowed his Queen, Elizabeth of York, to be crowned. But the common folk were in no way reconciled to his rule; and in less than two years there was another serious rising in the North.

This one began with a riot at York in the spring of 1489,[15] when an attempt was made to collect the subsidy that had just been voted for the Breton war. Northumberland urged the King not to insist on the collection of the subsidy as the people could not pay it. Henry simply sent back a commission for trying the rioters together with a curt

[13] Ib. ff. 78-9.

[14] Ib. ff. 97 ff.

[15] *Materials*, i. p. 443.

demand for the exaction of the tax to the uttermost farthing, whether they could pay it or not, and especially from those who 'whined most at it, lest it might appear that the decrees, acts and statutes made and confirmed by him and his high court of parliament should by his rude and rustical people be infringed, despised and vilipended'. Northumberland had no alternative but to obey; but he knew the danger he ran from 'the continual grudge that the Northern men bare against him sith the death of King Richard whom they entirely loved and highly favored, which secret serpent caused their fury to wade further than reason could retract or restrain'.[16] So he ordered his retainers to join him with such men as they could trust, 'having bows and arrows, and privy harness', at Thirsk on Monday, 27 April ;[17] but the precaution was vain. The very next day, when the Earl was at Cocklodge near Thirsk, 'the rude and beastlie people.... furiously and cruellie murthered both him and diverse of his household servants'.[18]

In the revolt that now began the rebels were nearly all yeomen and husbandmen of the North Riding,[19] and it is significant that their leader, John à Chambre, so far from being a Yorkist, had actually been made Ranger, Bowbearer and Forester of the Forest of Galtres for life in September 1485, 'in respect of his services and the great costs and charges borne by him in our late victorious field'.[20] After they had burnt the old Fishergate Bar and stormed the city of York,[21] the rebels were indeed joined by the Mayor and several gentlemen of Yorkist sympathies,[22] for the memory of King Richard still 'laid like lees at the bottom of men's hearts, and if the vessels were once stirred,

[16] *Hall's Chronicle*, p. 442-3.

[17] *Plumpton Corres.* p. 61.

[18] *Holinshed*, iii. p. 769.

[19] See the list of pardons in June and July 1489; *Materials*, i. pp. 451-528.

[20] *Ib.* i. pp. 36, 431 ; ii. p. 61.

[21] Drake, *Eboracum*, p. 306.

[22] *Materials*, i. p. 447-8.

it would rise';[23] but the revolt remained a rising of the commons, and Henry VII was fain to reconcile them to his rule by doing for them not less than Richard III had done.

In the circumstances, Henry was little troubled at Northumberland's death; for his heir was but eleven years old, and during his minority the whole of the Percy lands must be in the King's hands, leaving him free to return to Richard III's policy if he would. The first thing was to appoint a successor to his late Lieutenant; and when the King went south after repressing the revolt for which Northumberland's murder had been the signal, he left the Earl of Surrey, who had just been released from the Tower,[24] in the North as 'his Lyvetenant generall from Trent northwards, and Warden of the East and Middle Marches of England ageynst Scotland, and Justice of the Forests from Trent northwards. And there he contynued ten years and kepte the country in Peace, wyth Policy and many paynestakyng'.[25]

This summary of Surrey's offices needs correction. For Henry VII, reverting to Richard III's policy of dividing the government of the Marches from that of Yorkshire, took the former into his own hands, assigning the revenues of Gloucester's lands in the North for the maintenance of Berwick and Carlisle,[26] and making his own sons Arthur and Henry in succession Warden-general of the Marches, with Dacre as Lieutenant in the West March, Surrey in the

[23] Bacon, *Life of Henry VII*, ed. Ellis and Spedding, p. 2.

[24] Dugdale, *Bar. Angl.* ii. p. 267.

[25] The inscription on the Earl's Monument at Thetford, quoted in Weever's *Funerall Monuments* (1631), p. 386.

[26] 24 Jan. 1488, Richard Cholmley was made Receiver-general of the King's castles and manors in the North parts, including Sheriffhutton, Middleham, Richmond, Barnard, Cottingham, Sandal, Hatfield, Conisburgh and Wakefield, all the late Duke of York's lands, Raskell, Sutton, Elvington, Easingwold, and Huby, and certain issues in Berwick, (*Rol. Scot.* ii. p. 482). This appropriation of the revenues of the Crown lands north of the Trent for the maintenance of the Border service was confirmed by Parliament

East and Middle Marches,[27] each aided by a Council of March officials.[28] As a matter of fact, the government of Northumberland passed wholly into the hands of the local officials, while Surrey devoted himself to the ruling of Yorkshire, living most of the time at Sheriffhutton, the most princely house in the North,[29] of which he was made Constable and Steward.[30]

Here too a Council was set up, the stewards and constables of the royal lordships and castles being joined with the Lieutenant in the government of Yorkshire just as Richard III's Council had been. Thus, in a pardon issued in October 1490 there is reference to 'the earl of Surrey and other of the King's Councillors staying on the spot', i.e. in Yorkshire who had been appointed to inquire into the matter.[31] Moreover, we are expressly told that at the beginning of his Lieutenancy Surrey was assisted by Sir Richard Tunstall, Steward of Knaresborough and Kendal, 'a man of great wit, policy and discretion',[32] and we know that in the administration of justice he generally had as a colleague William Sever, Abbot of St. Mary's beside York, Justice of the Forest of Galtres, and Justice of the Peace in the three Ridings,[33] who had been associated with the administration of justice in Yorkshire since 1486 at least.[34] Now, the references to the Abbot in the *Plumpton Correspondence* and the York Records show him receiving petitions and bills of complaint, examining witnesses, and advising ar-

in 1496 (11 H. VII c. 35), when the revenues from the Crown lands in Cumberland were similarly assigned for Carlisle (11 H. VII c. 61).

[27] Pat. 4 H. VII m. 5d ; *Rot. Scot.* ii. pp. 501, 517-22.

[28] *Rot. Scot.* ii. p. 516. Cf. *E. H. R.* xxxii. p. 496.

[29] Leland, *Itinerary*, (1745), i. p. 67.

[30] Pat. 15 H. VII p. 2. m. 11.

[31] *Cal. of Pat. Rolls, 1485-1494*, p. 332.

[32] *Plumpton Corres.* p. xcviii ; *Hall's Chronicle*, p. 442 ; *Cal. Pat. Rolls, 1485-1494*, p. 95. He is called a 'king's councillor' in a grant of 20 March, 1487 (*ib.* p. 169).

[33] Y. H. B. viii. f. 83b ; *Cal. of Pat. Rolls, 1494-1509*, p. 666 ff.

[34] *Plumpton Corres.* pp. 85-6, 112.

bitration,[35] just as the President of a Council would do ;[36] and it is not unreasonable to believe that this was in truth the Abbot's position. In that case, we must regard Surrey's Lieutenancy in the North as an important stage in the evolution of the King's Council in the North into a royal court.

The exact scope of the authority and jurisdiction of the King's Lieutenant and Council in the North at this time cannot now be determined; partly because commissions which we know must have been directed to them are no longer extant, partly because we have no knowledge of the personnel of the Council and therefore cannot identify its members in the commissions that have survived. Surrey himself had a commission of array,[37] and we cannot doubt that the Council was associated with him both in the commissions of the peace and in the ordinary commissions of oyer and terminer for criminal causes in Yorkshire, which are distinguished from those for the other northern counties by the inclusion of a large number of lawyers.[38] But there is no direct evidence that they had a commission of oyer and terminer for causes between party and party such as Richard III's Council had. Indeed, what evidence there is, suggests that while such commissions were from time to time directed to some of the Councillors to hear and determine particular cases, the Council as a whole did not have a permanent commission of this sort before 1496 at least.

In February 1494, for instance, the Mayor and Corporation of York received letters from the King[39] informing them that he was grievously displeased to learn that divers matters of variance and 'aggruges' have lately fallen between them and the Chapter of the Cathedral,[40] and that he had

[35] *Ib.* [36] Titus F. iii. 94.

[37] *Cal. of Pat. Rolls, 1494-1509*, p. 32.

[38] Pat. 4 H. VII m. 5d. The lawyers were William Hussey, Thomas Brian, Guy Fairfax, Roger Townshend, Thomas Tremayle and William Danvers.

[39] Y. H. B. vii. f. 111.

[40] From the references to hedging and ditching in Surrey's letter of

therefore appointed the Earl of Surrey and the Abbot of St. Mary's to examine and pacify, if they could, the said grudges, or to remit the determination of the same to himself and his Council. Accordingly, the Mayor and his brethren, all dressed in violet, assembled in the Council Chamber on Monday, 7 April, at 7 o'clock before noon, and went to meet the Earl and the Abbot. But alas, these noble persons quite failed to reconcile the City with the Chapter, and on 17 September, Surrey wrote to the Mayor and Aldermen charging them to appear before the King and his Council at the Feast of All Hallows, and meanwhile to keep the peace and not interfere with the hedging and ditching.[41] Then, in 1495, Sir Robert Plumpton objected to a Star Chamber case in which he was defendant being referred to the Earl of Surrey and the Abbot of St. Mary's, because it concerned his inheritance and could not be rightly determined without learned counsel.[42]

The issue of a permanent commission of oyer and terminer for civil cases could not, however, be long delayed. The unrest of the North, to which the risings of 1487 and 1489 and another at Acworth in the West Riding against a benevolence levied in 1492[43] bore witness, seems to have been due in the main to the economic changes then in progress. Richard III had sought to allay it by protecting the commons; but Henry VII, relying on the gentry and middle classes, had been disposed to let things take their course, interfering only when he must. Experience, however, had now taught him that he must change his policy; and having secured the passage of the first statute against enclosures in 1489, he began to use the Court of Star Chamber for the protection of his poorer subjects lest they should take into their own hands the redressing of their wrongs.

17 Sept. it is likely that the quarrel was the old one that Northumberland had tried to settle.

[41] Y. H. B. vii. ff. 111b, 114.

[42] *Plumpton Corres.* p. 112 (26 Oct. 1495).

[43] *Ib.* p. xciv; Weever's *Funerall Monuments*, p. 386.

As the number of petitions to the King's Council in the Star Chamber increased, the custom grew up of referring the northern cases to local commissioners and taking them at Westminster only when the commissioners failed to settle them by agreement between the parties.[44] To erect a permanent commission to take such cases at York whenever the parties could be induced to submit their case to the Lieutenant and Council in the North must soon have become so clearly advisable that we can hardly doubt that ere long Henry VII imitated his predecessor in this as in so much else.

The urgent need there was for such a commission is well illustrated by a case that began in 1497. It seems that about 1496 Miles Wilestrop of Wilestrop in the Ainsty[45] cast down the town there, destroyed the corn fields and made pasture of them, and enclosed the common with quick-wood and paling and made a park of it wherein he planted walnut trees and grafted apple-trees.[46] His right to do so was disputed; and the tenants and servants of the Abbot of Fountains, Sir William Gascoigne and other landowners of the Ainsty[47] riotously broke down the paling. Both sides put bills of riot before the Mayor of York and the Justices of the Peace there, and in March 1497 a special commission was sent to Surrey, Sir Richard Neville of Latimer and the Mayor to inquire by inquest of true and lawful men of 'divers riots, routs, unlawful

[44] *Yorkshire Star Chamber Proc.* i. and ii. passim.

[45] He was the King's escheator in Yorkshire, 5 Nov. 1469—5 Nov. 1470, and married Sir Guy Fairfax's daughter Eleanor (Skaife, *Kirby's Inquest*, pp. xv, 27).

[46] *Yorks. Star Cham. Proc.* i. p. 17. In none of the earlier records is it clearly stated what Miles had done to incur the enmity of his neighbours; but in a petition against his son Guy in 1514 it is said that Miles and Guy had cast down the town, etc. and made a park of the common (*ib.* i. p. 167). As the attacks were made chiefly against the park palings we may suppose that the enclosure of the common was the origin of the whole business.

[47] *Ib.* pp. 15, 160. The second reference is to No. lxix, which is dated 1539 by the editor on the ground that in that year Sunday fell on 16 Feb. as required by the bill; but 16 Feb. 1500 was also a Sunday.

conventicles, seditions, insurrections, and other transgressions and wrong-doings within the liberty and franchise of the said city', and to inform the King and his Council. The Mayor held the inquest as directed, and on March 24 informed Surrey that the inquest found no riot on either side. Riot, nevertheless, there had been, and on April 16 Surrey sent to the Mayor a number of Privy Seals from the King directed to the peccant jurors.[48]

Wilestrop's troubles were only beginning. His neighbours assaulted his cousin, tore down the rails and pale-boards of his new park, and assembling on Marston Moor intending to pull down the rest of the paling, were only stopped by Sir Richard Cholmley[49] and others sent by the Earl of Surrey and the Abbot of St. Mary's to bid the rioters disperse in the King's name.[50] A few months later, the rioting was renewed, the paling was pulled down, the walnut and apple trees were cut down, a watermill and a fishpond were destroyed, and the game on Wilestrop moor was hunted.

At last Wilestrop petitioned the King's Council for redress. Privy Seals were sent requiring the Abbot of Fountains, Sir William Gascoigne, and divers of the rioters to appear before the Lords of the Council to answer his complaints; but the unlucky servant whom he sent to deliver them was soundly beaten for his pains and left for dead. Nor was this all; for Gascoigne and the Abbot now took out writs of *nisi prius* and *assise* against him, whereby he would be ruined. He therefore made suit that letters of Privy Seal should be sent to Gascoigne commanding him, with his servants, to appear personally before the Lords of the Council *sub poena*; and that letters missive should be sent to stay the suits at common law until the riots and confederacies had been determined.[51]

[48] Y. H. B. viii. ff. 17-19b.

[49] Supervisor of castles and receiver of the Crown lands in Yorkshire. He was almost certainly a member of the King's Council in the North (*Cal. of Pat. Rolls, 1485-1494*, pp. 437-8, 478).

[50] *Yorks. Star Chamb. Proc.* i. pp. 15-19.

[51] *Ib.* i. pp. 16, 159-60.

No doubt there was a good deal of exaggeration in Wilestrop's recital of his woes, and he had certainly brought his fate on himself; but the story illustrates both the way in which the economic and social changes of the time were increasing disorder, and the urgent need there was for a court at York which could deal not only with the disorder but also with its cause.

It was indeed the number of such cases that led Parliament in 1496 to supplement the great statute against Maintenance and Livery by another which, after declaring that many wholesome statutes could not be executed by reason of the embracery and corruption of Inquests, went on, almost in the words of Richard III's Instructions, to give to the Justices of Assize and of the Peace 'upon information for the King, authority and power by their discretion to hear and determine all offences and contempt committed and done by any person or persons against the form, ordinance and effect of any statute made and not repealed', and to award and make like process against such offenders as against any person or persons presented and indicted before them of trespass against the King's peace, also to give the defendant costs and damages against the informer, should the latter fail to make good his accusation, provided that such information did not extend to treason, murder or felony, nor to any other offence whereby any person should lose life or member, or any lands, tenements, goods or chattels to the person making the information.[52]

While it cannot be proved that Surrey and the Council in the North had a commission under this statute to proceed to summary conviction on charges of riot and so forth, it is extremely probable that they did, and that in consequence the Council in the North became in all but name a Court of Requests for Yorkshire, if not for all the northern shires. It is therefore very significant that when Surrey left the North in 1499, the government of Yorkshire passed, not to Sir Thomas Darcy, his successor in the Marches and at

[52] 11 Hen. VII c. 3.

Sheriffhutton,[53] but first to his old colleague, the Abbot of St. Mary's, now Bishop of Carlisle,[54] and then, on the latter's translation of Durham in 1502, to Thomas Savage, who had succeeded Rotherham as Archbishop of York in 1501; for both men were clearly chosen for their legal knowledge. In particular, Savage, a doctor of laws in Cambridge, who had succeeded Sir William Catesby as Chancellor of the Earldom of March in 1485 and had afterwards presided over the King's Court of Requests,[55] was eminently suitable for the Presidency of what was already the Court of Requests at York. The significance of the appointment becomes deeper when we notice that in the Archbishop's time the Yorkshire commissions of inquiry of offices[56] and so forth begin to include the names of canon lawyers like Thomas Dalby, Archdeacon of Richmond and Provost of St. John of Beverley, and Thomas Magnus, Archdeacon of the East Riding and Secretary to the Archbishop of York,[57] both of whom were probably members of that 'Council of the King at York' to which, with the Archbishop, Beverley sent two of its Governors in 1502,[58] as they certainly were of the Duke of Richmond's Council twenty-three years later.[59]

[53] *Rot. Scot.* ii. p. 532; Pat. 15 H. VII p. 2. m. 11.

[54] *Yorks, Star Chamb. Proc.* ii. No. lxv. This case belongs to Henry VII's reign, not to Henry VIII's; for these reasons: (1) Sir Thomas Wortley is stated in the bill to have been Sheriff of Yorkshire in April 'the xvii yere of your seid reigne', but Wortley was sheriff in 1502, i. e. 17 Hen. VII; (2) the petitioner is Thomas Delariver the elder, son of Marmaduke, and he died 24 April 21 Hen. VIII (1529), so that his oath could not possibly be taken on 5 Nov. 21 Hen. VIII, though it might have been taken on 5 Nov. 21 Hen. VII; (3) the bill is endorsed, 'W. duresme', but the Bishop of Durham in 1529 was Thomas, Cardinal of York, whereas in 1505 he was William Sever, translated from Carlisle in 1502.

[55] *Materials*, i. p. 22; Drake, *Eboracum*, p. 448; Le Neve, *Fasti Eccles. Angl.* iii. p. 112; Leadam, *Select Cases in the Court of Requests*, i. p. 3.

[56] *Cal. of Pat. Rolls, 1494-1509*, pp. 562, 579, 580, 618.

[57] *North Riding Records*, (N. S.) i. pp. 198 ff.

[58] *Cal. of Corp. Beverley MSS*, (Hist. MSS. Comm.) p. 169.

[59] P. 103.

The Archbishop's position resembled that of the future Lord President of the Council in the North much more closely than did that held by any of his predecessors. It does not seem that he held any office under the Crown, any stewardship or such-like; these were all in the hands of knights like Darcy and Cholmley. Yet there can be no doubt about his position; for there is in the York Records[60] a copy of a letter written by him in April 19 Hen. VII (1504) beginning, 'Thomas, by the Grace of God Archbishop of York, the King's Lieutenant and High Commissioner within these the North Parts of his Realm Sheweth that for so much as among the king's liege people within this realm of England many inconveniences of likelihood did ensue for payment and receiving of money as well groats as pence It is enacted by authority of the King's High Court of Parliament', and then follows an order that all groats and pence then current shall be taken in payment of debts, etc.

There is no other record of the Archbishop's Lieutenancy, and no commission of which he was a member is extant other than the commissions of the peace for the northern counties; but the evidence of the York Records as to his exceptional position with respect to the government of the North is confirmed from other sources. The Plumpton Letters supply us with our first proof. When a packed jury at the York Assizes in September 1502 had gratified the notorious Empson by awarding to the heirs-general the lands which Sir Robert Plumpton had held for twenty years as heir male to his father Sir William, Sir Robert and his wife and son refused to accept the verdict. For weeks the peace of the West Riding was disturbed by the attempts of the victors to take forcible possession of the Plumpton lands, and by the eviction of such tenants as refused to pay their rents to Sir Robert. Not content with evicting the tenants, William Plumpton took their cattle and goods for distress, and refused to obey when

[60] Y. H. B. ix. f. 17.

they sought to replevy them. The Archbishop then wrote in the style of the later Council documents, ordering him to obey, or on sight of this letter they, or their learned counsel for them, must appear before him and show reasonable cause why they refused to do so. When a bill was presented against William by one of the tenants, the Archbishop impanelled a jury to indict him and his servants, and when they refused, he ordered them to do so and 'threatened to punish exemplarily all who would not'.[61]

The second proof comes from the Pickering Records, where we find the Archbishop and his Secretary inquiring into the relations between Sir Roger Hastings and Sir Richard Cholmley, whose feuds were disturbing the peace of the honor, just as the Lord President and the Secretary of the Council in the North afterwards did.[62]

There can be no doubt that this new development of royal justice was very popular with those who had hitherto been helpless before powerful oppressors, and increasing resort was had to the King's Lieutenant and High Commissioner by all who thought themselves wronged, like those commons of York who desired of the Lord Archbishop that they might have the election of the Sheriffs as they had of the Mayor.[63] This popularity of royal justice, however, made conflict with the established local authorities inevitable; and so early as 15 March 1502, the Mayor and Council of York unanimously agreed 'that if there be any dette, dewte, trespasse, offense, or any other cause of greiff herafter appering betwixt any of the xiith, xxiiijth or betwix any other franchist men shall not from hensfurth complayn to the Kynge's grace or to any lord or other person nor sew in any court at London or any other place tofore all such cause and matere be shewed to the Maier for the tyme beying. And by the Maier and his counsiell agreed and determyned within the space of xl^{ti}

[61] *Plumpton Corres.* pp. cvi-cxiv, 164, 168-9, 171.

[62] *North Riding Records*, (N. S.), i. p. 198 ff.

[63] 15 Aug. 1504; Y. H. B. ix. f. 19b.

dayes next after that it be shewed to the Maier, And if ther be none Agrement ne decsecsion taken therin by the maior and his Counseill within the said xl dayes Then the partie greved in any suche behalve to have licence of the maior to sewe at the comon lawe accordyng to the Kyng's charters And if any Aldermen do contrary to this ordinance at any tyme hereafter to forfett and lese toward the comonwelth of this citie xx^{li} and if any of the xxiiijth do the contrary to forfett and lese x^{li} and if any other franchist person do the contrary to forfett xls at every tyme in maner and forme above said'.[64]

The resistance thus offered to the encroachment of the King's Council and Commissioners on local courts arose from a perfectly natural jealousy on the part of those who saw their most cherished privileges in danger. At the same time it is clear that the King's Lieutenant with his offer of equitable justice to the very poorest was forcing local tyrants to look to their ways, and quite wholesomely fluttering the municipal as well as the seigneurial dovecots.

The objection taken to the Commissioners who followed the Archbishop of York was of quite a different character, and brings into view the abuses to which the characteristic Tudor system of government was open. That there were any such Commissioners is known to us only because Lord Darcy, having drawn up a petition in 1529 against the commission under which the Duke of Rchmond's Councili heard and determined causes between party and party, wrote on the outer leaf these words: 'Mem. how that the like commission that my lady the king's grandam had was tried and approved greatly to the king's disadvantage in stopping of many the lawful processes and course of his laws at Westminster Hall; and also his subjetts thereby, and none gain commonly by any such commission but the clerks which for their proper lucre doth upon every light surmise make out processes, etc.'.[65]

There is absolutely no trace among the official records

[64] Ib. viii. f. 129. [65] *L. & P.* xii. pt. 2. No. 186 (38).

of any such commission having been given to the Countess of Richmond; but Darcy was a contemporary, and his statement is borne out by that most indefatigable plodder and searcher of ancient records, William Noy.[66] The question whether a woman could be a Justice of the Forest having been raised at a Reading on the Forest Law at Lincoln's Inn in August 1632,[67] several instances were given of women who had sat on the Bench of Justices of the Peace within the last century, and Noy quoted the case of the Countess of Richmond, mother of Henry VII. He said that 'he had made many an hour search for the record' of the commission she must have had, 'but could never find it, but he had seen many arbitraments that were made by her'. A more recent search among the Patent Rolls and Privy Seals of Henry VII has had no better reward: the Countess's name is not in the commissions of the peace for the northern counties. There is, however, nothing improbable in the statement that she had a commission identical with the Duke of Richmond's for all the northern shires. That it has not been enrolled would only shew that, like his, it was an exceptional one.

As a matter of fact, the Countess was an eminently suitable person to be, shall we say, High Commissioner of Oyer and Terminer in all cases not touching life, limb, or inheritance of land. She had always taken a keen interest in the government of the North, and in July 1501 had asked her son, 'if it will please your Majesty's own heart, at your leisure, to send me a letter, and command me that I suffer none of my tenants to be retained with no man, but that they be kept for my lord of York, your fair sweet son, for whom they be most meet, it shall be a good excuse for me to my lord and husband; and then I may well and without displeasure cause them all to be sworn, the which shall not after be long undone'.[68] Moreover, she was at

[66] Burton's *Diary*, ii. p. 444 n, quoting Lloyd.

[67] Harl. 980. No. 166, p. 153.

[68] Written from Calais, 26 July, 1501; Halsted, *Life of Margaret Beaufort, Countess of Richmond*, p. 212.

one with her son in giving administrative power to able men of middle class origin, and it was in her Council and service that Henry VII had found some of his ablest ministers.[69] So a commission to her, while it might have to include some of the northern landowners, could easily be made the means of bringing the North directly under the control of the King and his chosen ministers. It is, therefore, not improbable that Margaret Beaufort was indeed one of her son's High Commissioners in the North parts. If so, she must have succeeded Archbishop Savage; for the years following his death in September 1507 are the only ones unaccounted for in Henry VII's reign, so far as the government of the North is concerned.

How closely the commissioners associated with her were connected with the King's Council in the North we have no means of knowing; but there can be very little doubt that among them were Empson and Dudley, 'lawyers in science, and privy councillors in authority'[70] as they were. These 'ravening wolves' had established for themselves a position of authority at a very early period in the reign; but it was in 1504 that they sprang to the front. In that year Empson, who had been Attorney-general of the Duchy of Lancaster since 18 September 1485,[71] was made Chancellor of the Duchy, and Dudley was chosen Speaker of the House of Commons. In November of the following year they, together with John Hussee, one of the judges, James Hobart, the Solicitor-general, and Thomas Lucas, the Attorney-general, visited all the northern counties and took recognisances from many of the gentlemen there for the payment of fines imposed for one cause or another.[72] Nothing is more likely therefore than that the 'masters

[69] Bray was her Receiver-general before he became Treasurer to Henry VII (*Ib.* p. 167); the Earl of Surrey was her Treasurer as well as Treasurer of England (*L. & P.* i. No. 5097).

[70] Bacon, *Life of Henry VII*, p. 217.

[71] *Materials*, i. p. 549.

[72] Privy Seals, Oct. and Nov. 23 H. VII when the fines were paid and the recognisances cancelled.

and surveyors of the King's forfeits', as Grafton calls them, [73] were included in a commission which might fairly be described as for inquiring into 'outlawries, old recognisances of the peace and good abearing, escapes, riots, and innumerable statutes penal'.[74]

In such case, the Countess of Richmond's commission may be the one by which Empson was said to have 'usurped upon the jurisdiction of other courts, in hearing and determining divers matters properly belonging to them';[75] and it may have been at his trial that the northern commission was 'tried and approved greatly to the king's disadvantage in stopping of many of the lawful processes and course of his laws at Westminster Hall'. The suggestion is in some measure confirmed by the fact that when Henry VIII, 'to please the people, who had been sore oppressed in his father's time', ordered information to be taken against Empson and Dudley in all noted towns, the Earl of Northumberland with several lords held an enquiry at Hull where he received the complaints of many sufferers.[76] That there should be two commissions in the North at the same time, calling forth similar complaints is so very unlikely that it seems probable that the Countess of Richmond's commission was the one referred to in Empson's indictment.

The identification is of course merely conjectural, and is given here for what it may be worth. Yet, could it be established, it would explain what must otherwise remain inexplicable, namely, the fact that at Henry VIII's accession there disappeared every trace of the special jurisdiction under which the North had lain for so long. It is true that as the echoes of the Wars of the Roses died away, the need for a ruler of the North parts with the military functions of the King's Lieutenant disappeared; but every year

[73] *Grafton's Chronicle*, p. 228.

[74] *Ib.* p. 231

[75] Howell, *State Trials*, i. p. 283.

[76] Gent, *Hist. Hull*, p. 106, note kk.

the police jurisdiction and the judicial authority of the High Commissioner had become more necessary, and the transition from the Justice of the Peace in the North parts to the Council in the North was in fact almost complete when Henry VIII undid the whole of his father's work by allowing the Countess of Richmond's commission to lapse, and the statute of 1496 to be repealed. It cannot be that the Ministers of the Crown really found that it was to the King's disadvantage that speedy and indifferent justice should be administered in the North parts and that the penal statutes decreed in open parliament, notably those against maintenance and livery, should be executed and observed.[77] But if the commission whereby these ends were to be attained had indeed been entrusted to Empson, who had richly earned in the North the reputation of a 'ravening wolf' and a perverter of justice, it would be easy to understand how the government came to lay aside a commission which the popular voice denounced as more potent for evil than for good.

It was a mistake, of course. The commissioners might deserve condemnation for abusing their powers; but that the commission was necessary to the social well-being of the North was shown by the immediate increase in the number of Star Chamber cases from beyond the Trent.[78] Nevertheless, influenced partly by popular clamour and partly by personal jealousy of the great nobles whose claim to rule the North in his name could not well be set aside, Henry hesitated to revive the commission; and sixteen years after the Countess of Richmond had passed away and Empson had expiated on the scaffold his sins against justice, the problem of the North still awaited complete solution.

[77] Empson's plea in his own justification (Howell, *op. cit.* p. 282).

[78] *Yorks, Star Chamber Proc.* and *List of Star Chamber Cases for the reign of Henry VIII, P. R. O.*

CHAPTER V.

The Duke of Richmond's Council.

The dissolution of the Council in the North in 1509 had been premature, and only a dozen years had passed when this was brought home to Henry and Wolsey.

Already the gorgeous pageantry of the Field of Cloth of Gold had been forgotten, and men were anxiously awaiting the opening of the great contest between Valois and Habsburg which was to devastate Europe for generations. Wolsey knew well that the prosaic need of keeping the Flemish market open to English wool must in the end force England into alliance with the Emperor, if he could not keep her neutral. Before the end of 1521 he knew that he had failed, and preparations for war with France began. So surely, however, as the English levies crossed the Channel, the Scots would gather on the Borders. Therefore it behoved him to look to the northern defences, and attention, long riveted on the Continent, was once more turned to the North.

Now, it is noteworthy that while successive kings had sought during the fifteenth century to establish order in Yorkshire, they seem to have been content to leave the Marches under the uncontrolled rule of the Wardens. While these were Border magnates like the Percies and the Nevilles, all had gone well. With all their faults they had ruled the North as became great noblemen holding high office in the State, bringing to the management of local affairs the wider outlook and broader policy induced by participation in the King's Councils. But the Tudors, jealous of the old nobility, preferred to entrust the defence of the Marches to knights and gentlemen representative

of those middle classes on whose support the Tudor government rested, men who owed their authority to no power of their own but only to their commission from the Crown.[1] At their head was Lord Dacre of Gilsland,[2] a baron of ancient lineage but little wealth until he married his cousin Elizabeth, the heiress of the last Baron of Greystoke. In spite of the wealth and influence that came to them by this marriage, the Dacres were never more than Border chiefs; and they never rose above consideration of their own interests and the prosecution of their own feuds.[3] Especially in the East and Middle Marches, of which he became Warden in 1511, Lord Dacre's rule was disastrous. The government of the Border shires went to pieces; and when the newly-elected Bishop of Carlisle went north in February 1522 to assist Dacre in organising the Marches for the coming war,[4] he found a state of affairs that was simply appalling.

For a long time no Quarter Sessions had been kept because there were so few Justices, especially of the Quorum;[5] and in 1521 there were in Cumberland and Northumberland no sheriffs to serve the King's processes or to keep the Sessions.[6] Indictments for murder were exceptional; either a feud followed which set the country-side in an uproar, or the case was referred to arbitrators by whose award as to the amount of compensation to be paid both parties bound themselves to abide. The award given and the money paid, the King's pardon was then sought for the murderer, and seemingly given without question.[7]

[1] E.g. in 1523, when Dorset was made Warden under Surrey as Lieutenant-general, Sir William Bulmer was made Lieutenant of the East March and Sir William Eure of the Middle March (*L. & P.* iii. No. 3875).

[2] Warden of the West March since May, 1486, Warden of all the Marches since Aug. 1511 (*Rot. Scot.* ii. pp. 472, 517).

[3] *L. & P.* iv. No. 1460.

[4] *Ib.* iii. pt. 2. No. 2075.

[5] *Ib.* iv. No. 2435.

[6] *Ib.* iii. No. 1225.

[7] *Ib.* iv. No. 25; iii. No. 1920. In 1536 the rebels asked why the king should not fill his coffers as his father had done by selling pardons to men

As for theft, the Bishop wrote to Wolsey from Newcastle in 1522[8] that 'there is more theft, more extortion by English thieves than there is by all the Scots of Scotland. There is no man which is not in a hold strong that hath or may have any cattle or movable in surety, thorough the Bishopric; and from the Bishopric till we come within 8 mile of Carlisle, all Northumberland likewise, Hexhamstead, which longeth to your Grace, worst of all; for in Hexhamshire every market day there is fourscore or 100 strong thieves; and the poor men and gentlemen seeth them which did rob them and their goods, and dare neither complain of them by name, nor say one word to them. They take all their cattle and horse, their corn as they carry it to sow or to the mill to grind, and at their houses bid them deliver what they will have or they shall be fired and burnt. By this ungracious mean, not looked to, all the country goeth, and shall more, to waste'.

Clearly, Dacre ought to have been removed from the Wardenship; but he knew the country thoroughly, and he had in his hands all the threads of Border politics, both English and Scottish. So Wolsey compromised by sending the Earl of Shrewsbury up in July 1522 as Lieutenant-general of the North. From the instructions given to him,[9] it is obvious that the defence of the Borders was to remain in the hands of the 'valiant captains' already there, and that Shrewsbury's business was to raise troops in Yorkshire by indenting with the nobles and gentleman for men, and to administer impartial justice in all causes, to repress and punish riots without loss of time, and to certify the King of all occurrences. While in the North he was to have choice of Pontefract, Sheriffhutton and Barnard Castle for a residence. Finally, he was to take counsel with the Earl of Northumberland, Lords Dacre, Darcy, Latimer,

who had slain others or broken the peace, when they were able and willing to pay for pardon (*ib.* xi. No. 1244).

[8] *Ib.* iii. No. 2328.

[9] *Ib.* iii. Nos. 2412, 2439.

Percy and Conyers, and Sir William Bulmer, these being the landowners and March officers without whose help the Lieutenant would be powerless. Shrewsbury, however, had been appointed simply to conduct the war, and there was at this time no intention of establishing a permanent Lieutenant in the North. So, when Dacre had bluffed Albany into accepting a truce which broke up his army and ended the campaign for the year, the Earl was recalled.

As a matter of fact, Henry and Wolsey had escaped complete disaster only by the narrowest margin; for Carlisle, which had been threatened in 1522, was defenceless,[10] and Berwick was not in much better case. Their only chance was an offensive campaign, and as soon as spring brought open weather, the best general in England, the Earl of Surrey, was sent north as Lieutenant-general to harry the Scottish border.[11]

While in the North, Surrey had time and opportunity to observe the condition of the country, and he sent a report to Wolsey which more than confirmed all that the Bishop of Carlisle had written. In it he says that when he sat at Newcastle with the judges to do justice and hear complaints, it was found that four arrant thieves had escaped from Alnwick Castle before the sessions, and eight from Newcastle. Eleven others were had at the bar, but neither Surrey nor the judges could get any man to give evidence against them. This, Surrey thinks, is owing to two causes: (1) that there are so few of the gentlemen of Northumberland who have not thieves belonging to them; (2) that the whole country thinks the talk of administering justice there is only to frighten them, as no man is appointed to continue among them to see justice administered. Then he adds that the judges think it is ten times more necessary to have a Council there than in the Marches of Wales.[12]

The need for a Council was not confined to Northumber-

[10] *Ib.* iii. No. 2536.
[11] *Ib.* iii. No. 2875.
[12] *Ib.* iii. No. 3240.

land. In the same letter, Surrey reported that in Yorkshire he had found the greatest dissension among the gentlemen, who would have fought together if they had met. By the advice of the judges, he had sent for all the parties and got them to promise to be friends: Sir Robert Constable and his friends against young Sir Ralph Ellerker and Sir John Constable of Holderness; Sir Richard Tempest against Sir Henry Savile, Wolsey's servant; Sir Ralph Ellerker the elder against Edward Gower. But disorder, however serious, was not the only evil to be remedied by the establishment of a Council in the North. Surrey also reported that he had been four days at York with the Justices hearing infinite complaints of the poor people, which could not have been fully redressed in a whole month.

Order, although by no means complete, had been so far established south of the Border shires that many men who had formerly pursued their feuds in the field, now pursued them in the law-courts. For sheer malice many suits were removed out of the local courts into the courts at Westminster where poor people could not pursue their right. The barony court of Kendal was not the only court which at that time was suffering loss 'through sundry wealthy and malicious persons by maintenance and livery intending for ill-will and malice to infringe and break the said laudable custom', —i.e. that the Steward should order and determine all strives and variancesthere growing — 'whereby they think they should the shortlier attain to their malicious purposes in the subverting and altering of the good order, tranquillity, and restful quietness of the said parts, doth go about as much as they can daily to prosecute, vex and sue to London such poor men as be not of substance to follow their own right and causes, but compelled by restraint of poverty to remit and slack their suits and rights at the pleasure of the appellant whereby not only the poor men with the wealth of those parts is right likely in brief time to be clearly subverted and destroyed, but also daily both by the piteous complaints of poor men

and letters sent unto me out of the same parts, I am so molested with the exclamation that is made there that I am compelled to write for remedy therein — For sure I am that none will come to complain at London except it be for malice to undo their poor neighbours which is not able to wage nor try against the appellant their right. And such persons as had rather have their malicious appetites fulfilled than for lack of any justice or goodness that they mind or intend to the contrary'.[13]

This was just the sort of plea to appeal to Wolsey who, striking at the great, was genuinely anxious to win for his master's government the approval and support of the masses without whose help the opponents of Tudor rule would be powerless. Thanks to his careful attention to the complaints of the poorest, Chancery had become the most popular court in the kingdom and poor suitors flocked to it daily.[14] Such was the pressure of business that the Court of Requests, to obtain relief from which poverty was the one necessary qualification, was already being differentiated from the Court of Chancery;[15] and the Cardinal was probably even then contemplating the creation of local Courts of Requests such as the Council in the North had been in the days of Richard III and Henry VII, when Surrey's letter with its remark about the poor suitors whose claims would take a month of hearing, came to hand and decided him to 'delegate from the Sterre Chamber all maters of the North parts and Wales'.[16]

If the argument in favour of re-establishing a Council in the North needed strengthening, two more considerations might be urged. The enclosure both of arable land and common waste, whether for convertible husbandry or sheep-farming, had been going on with increasing rapidity

[13] Sir William Parre to Cromwell, 20 Ap. 1532; *ib.* v. No. 951.

[14] Kerly, *Hist. of Equity*, p. 96.

[15] Leadam, *Select Cases in the Court of Requests*, p. xii.

[16] Sir Thomas Elyot (author of *The Governour*) to Cromwell; Ellis's *Original Letters*, Series I. vol. ii. p. 115.

since the passing of the first statute for the maintenance of husbandry in 1489. The Act had been renewed in 1515, just before Sir Thomas More's Utopia called attention in arresting fashion to the movement and its attendant evils of unemployment, vagrancy and crime. Commissioners of Inquest sent out in 1517 had discovered a state of affairs sufficiently disquieting, and a decree in Chancery given in July 1518 showed that the Cardinal was prepared to enforce the law by all the means in his power. 'From this time the idea of a royal commission was never absent from the minds of politicians'.[17]

North of the Trent the Inquest had been confined to Yorkshire. There it found that, while enclosure had not gone very far, it did exist, especially in the clothing districts. Many of the enclosures were like Wilestrop's, who cast down a whole town to make a new park ; but more of them were 'intakes', enclosures of commons and wastes, which were let with the houses newly built on them to tenants who held by custom of the manor. These enclosures, being nearly always arable, were undoubtedly improvements ; and by providing new holdings they did much to reduce unemployment. Yet, since these 'newholds', as they were sometimes called,[18] were nearly always close to the existing villages, the old tenants had to drive their beasts to more distant pastures, even if they did not find the amount stinted. 'Intakes', therefore, roused a resentment as bitter as that roused by the laying down of ploughs of pasture, and were as fruitful a source of disorder. They were most numerous in the upland, where the most notable offenders were the King himself and the Earl of Cumberland ; and enclosure riots were frequent both at Middleham and in Craven.[19]

[17] Leadam, *Trans. R. Hist. Soc.*, vi. p. 167 ; vii. p. 127 ; viii. p. 251 Gay, *ib.* N. S. xiv. p. 236 ; Ashley, *Econ. Hist.* i. pt. 2. p. 283.

[18] Whitaker, *Whalley*, pp. 268-9.

[19] *Ib.* p. 208 ; *Yorks. Star Cham. Proc.* ii. p. 178 ff. ; *L. & P.* xii. Pt. I. No. 919.

Still, 'intakes' were also numerous in the lowland, especially in the neighbourhood of the towns, where the enclosure movement added bitterness to the jealousy already existing between master and man, rich and poor, governors and governed. At this time, when the towns were all small, even the largest was rural to an extent which it is now hard to realise, though the list of agricultural functionaries employed under the Corporations at a much later date is very suggestive of the rural character of the towns in northern England.[20] Within the walls of York itself, there were many gardens and orchards, and cattle, sheep and pigs were free to wander about the unpaved streets at their own sweet will;[21] while beyond the walls the city possessed extensive arable lands as well as the great common of Knavesmire, which had always been a stray for the cattle of poor freemen. Ever since the middle of the fifteenth century the Mayor and Council had been enclosing portions of these lands 'to the profit of the city', and every fresh enclosure had been the occasion of a more or less serious riot.[22]

In the North, however, the commercialising of landowning which was so characteristic a feature of the sixteenth century, more often took the form of rack-renting than of enclosing. As the country was essentially pastoral, the holdings were as a rule small but endowed with extensive pasture rights, so that even without enclosure the acquisition of these holdings was worth while. To this, without violation of the law, the customary tenure lent itself with fatal facility. As the tenants held by copy of the court-roll, doing suit to the lord's court, making fine at the lord's will on change of lord or tenant, and going with the lord to the Border when summoned,[23] nothing was easier than to demand instead of the customary 'gressom' of two

[20] Webb, *Eng. Local Govt.* ii. p. 303.

[21] Y. H. B. f. 27.

[22] Drake, *Eboracum,* p. 348; *Y. H. B.* xiii. ff. 39, 47.

[23] Humberston's Survey in 1570, K. R. Misc. Bks. 37, 38.

years' rent,[24] fines so great as compel the tenant to throw up his holding rather than pay. In the lowland, where the rise first began, many were glad to buy relief from these uncertain demands by accepting leases for term of years. These, of course, destroyed the tenant-right, and when the leases expired, renewal could be bought only by the payment of heavy fines. As yet, however, leases for term of years were hardly known in the upland, and there the customary tenants were just beginning to realise the disadvantages of their tenure. Their case was the worse because, in common with the freehold tenants, who generally held by payment of noutgeld or cornage, they were required to pay to the lord's castle a yearly tribute of oats known as 'serjeant's puture, or food', and hens, called 'pout' or boon hens[25], payments which, like the payment of tithe-corn, became more and more burdensome as prices rose.

It is, therefore, as easy to understand why enclosure riots increased in the North until they culminated in the great rising of 1536 as it is to understand why the commons then demanded their tenant-right and insisted on 'the gressoms for poor men to be laid apart but only penny farm, penny grysums, with all the tithes to remain to every man his own, doing therfor according to their duty, and 'to have nowtgeld and serjeant corn laid down, which we think were a great wealth for all the country, and all the intakes that be noisome for poor men to be laid down'.[26] There was however, no legal remedy ;[27] and short of a

[24] The 'garsume', 'gressom', 'ingressum', or 'income', as it was variously called, was the fine payable by a customary tenant at every change of lord or tenant (ib.). Although the amount of a gressom was in law at the will of the lord, in practice it had been fixed before the end of the thirteenth century at double the white rent (Nicolson and Burn, i. p. 17 ; cf. a customal of Clitheroe in Whitaker, *Whalley*, pp. 188-190).

[25] Nicolson & Burn, i. p. 292 ff.

[26] *L. & P.* xi. Nos. 893 (3), 1080 ; cf. *ib.* xii. pt. 1. No. 687.

[27] So late as 1594 it was held by King's Bench that after the demand of a fine by a lord and the refusal of the tenant to pay, even though the fine were unreasonable, the estate would be forfeited (Ashley, *Econ. Hist.* i. pt. 2. p. 283).

statute restraining landlords from taking unreasonable fines, such as no sixteenth century parliament was likely to pass, the commons could have no relief save by way of equity. A court of equity close at hand, which could deal firmly with those who took in and enclosed commons and were 'extreme in taking gressoms and overing of rents',[28] was therefore urgently needed in the North.

Consideration of the commons was not, however, a characteristic of Tudor government, which rested on the gentry and the merchants. In the end, therefore, the restoration of the Council in the North came about simply as part of the policy of securing closer control over the outlying parts of the realm which was forced on the Crown by the resistance offered in 1523 and 1525 to the heavy taxation required to meet the cost of the wars with France and Scotland.[29]

The decision once taken, it remained only to choose the King's Lieutenant. This was far from easy. All the precedents as well as social convention required that he should be a great noble; for the time had not yet come when the King's authority could make the meanest man respected by the proud northern gentlemen.[30] Such a noble could hardly be other than Surrey or Northumberland. Yet, not only was the reversal of policy involved in such an appointment most distateful to Henry and Wolsey, but the judicial murder of Buckingham, Northumberland's brother-in-law, rendered the wisdom of making him Lieutenant in the North something less than doubtful, while Surrey's chances were destroyed by the Cardinal's jealousy of him as a rival for the King's favour. Nor could Henry VII's precedent of appointing an ecclesiastic as his Lieutenant and High Commissioner be followed, for Wolsey himself was both Archbishop of York and Bishop of Durham. Henry therefore fell back on the still earlier precedent

[28] Instr. to the Council in the North in 1538.

[29] *L. & P.* iv. Nos. 377, 1318.

[30] *Ib.* xii. pt. 1. No. 636.

set by Richard III when he made his son's Household at Middleham his Council in the North. The Lady Mary had already been sent to live at Ludlow with a Household intended to form the Council in Wales and the Marches ;[31] and the suggestion that the earldom of Richmond should be revived for Henry's illegitimate son, Henry Fitzroy, whose existence few had hitherto suspected, and that the boy should be made Warden-general of the Marches and sent to live at Sheriffhutton with a Council to govern in his name as Lieutenant-general in the North parts, was welcomed as the solution of more than one problem. We are not here concerned with the larger questions of policy involved in the public acknowledgement of this base brother of the Lady Mary. It is enough to notice that the adoption of this expedient enabled Henry and Wolsey to entrust the government of the North to those 'new men', the knights and lawyers, who were to the Tudors their natural allies against the survivors of the old nobility. So Henry Fitzroy, newly made Earl of Nottingham and Duke of Richmond and Somerset,[32] was given the Richmond and Neville lands in the North[33] and made Warden-general of the Marches of Scotland[34] and Chief Justice of the Forests beyond Trent.[35] At the same time Wolsey made him High Steward of the Bishopric of Durham and of the Liberties belonging to the Archbishop of York ; and his authority was completed by a commission which made him Lieutenant-general North of the Trent.[36]

A Household had already been formed for the boy[37] and awaited his arrival at Sheriffhutton, which had been

[31] Skeel, *The Council in the Marches of Wales*, pp. 49 ff.

[32] 16 June, 1525 ; *L. & P.* iv. No. 1399.

[33] By patent 11 Aug. 17 H. VIII, confirmed by Act of Parliament 22 H. VII, c. 17.

[34] 22 July 1525 ; *L. & P.* iv. No. 1510.

[35] *Camd. Misc.* xii ; *Two London Chronicles*, ed. C. L. Kingsford, p. 2.

[36] Lord Herbert of Cherbury, *Life of Henry VIII*, (1870), p. 270.

[37] Richmond's Household accounts begin 12 June, 1525 and are signed by his Council ; *L. & P.* iv. No. 1512.

assigned to him as a residence.[38] As this Household was intended to be the Council in the North, its composition is both interesting and instructive.[39] There was in it not one man above the degree of a knight, and nearly every man in it was either a cleric or a lawyer and in Wolsey's service in some capacity or other. At the head was Brian Higden, the Archdeacon and Dean of York, as Chancellor ;[40] then came Dalby and Magnus, the Archdeacons of Richmond and the East Riding,[41] as Dean of the Chapel and Treasurer of the Chamber, and as Surveyor and Receiver-general respectively. The Steward of the Household was Sir William Bulmer, the Captain of Norham and Lieutenant of the East March ;[42] the Comptroller was Sir Thomas Tempest, a serjeant-at-law, Seneschal and Comptroller of the Bishopric of Durham ;[43] only the Treasurer of the Household, Sir Godfrey Foljambe, the Chamberlain, Sir William Parre,[44] the Vice-Chamberlain, Richard Page,[45] and the Cofferer, Sir George Lawson,[46] can be connected with the King's service rather than with the Cardinal's.

The connection with Wolsey is even more striking in the

[38] Leland, *Itinerary*, (ed. 1745), i. p. 67.

[39] Harl. 6807. f. 21 ; The Book of the Household of the Duke of Richmond. A copy in Harl. 589. f. 192 is printed in Camd. Misc. iii. *Inventories of the Wardrobes of the Duke of Richmond and Catherine of Aragon*, ed. F. G. Nichols. It is to this book that I am indebted for most of the information given below concerning the members of the Council.

[40] D. C. L. at Oxford, 23 June, 1506 ; died 5 June, 1539.

[41] P. 84.

[42] *L. & P.* iii. No. 2875.

[43] *Ib.* iii. No. 2531 ; Foss, v. p. 101.

[44] Steward of Richmond's Barony of Kendal ; *L. & P.* iv. No. 951.

[45] Recorder of York, 1527-33 ; Drake, *Eboracum*, p. 368. He resigned the Recordership at the request of the City Council 'for that he is unlernyd in [the temporal law of the realm] as is afforesaid wherby the Mayor and sheriffs of the said city oftymes have been greatly blamyd with diverse and many of the King's subjectes for the executing of their offices'. They gladly gave him an annuity of £12 to be rid of him (Y. H. B. xii. f. 11).

[46] *L. & P.* vii. No. 684 ; *ib.* Nos. 1512, 1756, 2069. He had been Treasurer of Berwick since July 1522 (*ib.* iii. No. 2389) and retained the office. He was Mayor of York in 1530 (Y. H. B. xi. f.95b).

case of those described in the List of the Household as Councillors, that is, members of the Council who were not also officers of the Household, for all the officers were members of the Council.[47] They were John Palgrave, Richmond's Schoolmaster,[48] soon replaced in the Council by William Babthorpe, a Yorkshire landowner and a lawyer;[49] Thomas Fairfax, a serjeant-at-law;[50] William Frankleyn, Chancellor of Durham;[50a] Robert Bowes of Streatlam, a Master of Requests and Deputy-steward of Barnard Castle;[51] Sir William Eure, Escheator of Durham under Wolsey,[52] Lieutenant of the Middle March, and Keeper of Tynedale and Redesdale;[53] Walter Luke, the Duke's Attorney-general, a serjeant-at-law who practised in Chancery[54] and became a judge in King's Bench in 1532;[55] William Tate, D.D., the Duke's Almoner; John Uvedale, the Duke's Secretary, who had begun service in the Signet in 1503;[56]

[47] All of them sign official letters from the Council at one time or another (*L. & P.* iv. passim), and such of them as were still alive in 1536 were included in the official list of 'the late Duke of Richmond's Council sitting in the causes of Justice' (MS in the Rolls House, 2nd series. No. 843; printed in *Inventories of the Wardrobes* etc. p. lxx). The men so described were Parre, Bulmer, Foljambe, Tempest, Eure, Higden, Magnus, Tate, Fairfax, Bowes, Uvedale, Luke and Babthorpe.

[48] He ceased to sign Council letters after April 1526. From the beginning, the real work as Schoolmaster was done by Richard Croke, the Greek scholar (*L. & P.* iv. No. 1948), who was also Nottingham Pursuivant to the Duke (*ib.* No. 6363) (30).

[49] *Plumpton Corres.* p. cii.

[50] He was Sir Guy Fairfax's second son (*Inventories, etc.* p. xx), and was Recorder of Doncaster, 1533 (*Records of Doncaster,* ii. p. 67; Foss, v. p. 102). He married Cecily, sister of the 1st. Earl of Rutland and daughter of Lord Roos and Anne, Duchess of Exeter, sister of Edward IV (Thoresby, *Ducatus Leodensis* p. 65).

[50a] He was made Dean of Windsor in Dec. 1536 (*L. P.* xi. No. 1417 (16).

[51] *Ib.* xi. No. 921.

[52] 1523-29; *ib.* iii. No. 2877.

[53] *Ib.* iii. No. 2875; Titus. F iii. 104.

[54] He was one of the Commissioners appointed in June 1529 to hear and determine cases moved before the King in Chancery and committed to them by the Cardinal of York (*L. & P.* iv. No. 5666).

[55] Foss, v. pp. 102, 189.

[56] S. P. Dom. Add. Edw. VI. ii. 64.

and Sir Christopher Dacre, who was sworn a member of the Duke's Council on becoming Lieutenant of the West March in August.[57]

Here we have a Council whose composition and duties were the same as those of the Council of any other great nobleman of the day. It is exactly like John of Gaunt's Council in the fourteenth century as well as that of the contemporary Earl of Northumberland,[58] and its members had to manage the Duke's household and estates besides assisting him in the performance of his public duties. For the titles of the official members were not honorary, and their offices were no sinecures. The household over which they ruled was anything but orderly. There is still extant an indignant letter written to Wolsey by the Duke's Schoolmaster, Richard Croke, complaining of the way in which the boy's studies were interrupted and his own authority flouted by the gentlemen of the Household.[59] In others,[60] he alleges that there was great waste in the household owing to Sir William Parre's negligence in checking Cotton, the notary of the kitchen. Parre was nearly always away, and when there, was always hawking and hunting, and only laughed when Croke asked him to intervene. Magnus was forthwith ordered to take the direction of affairs at Sheriffhutton, and a Clerk of the Green Cloth was sent to help him to examine and put in order the accounts. A few months later the unfortunate Clerk was dead, 'what with watch, taking of cold, and thought for this matter'; but not before he and Magnus had proved that where the Council thought they were spending £25 a week, they were really spending £50.[61]

In another capacity too we can see that the Council

[57] Titus F iii. 104.

[58] 'Northumberland's Household Book', *Antiq. Repos.* iv. p. 23 *ff.*

[59] *L. & P.* iv. No. 3135.

[60] *Ib.* iv. Nos. 1947, 1954.

[61] *Ib.* iv. Nos. 2131, 2435, 2483, 2835; *Inventories etc.* pp. xxxiii-xxxv; *State Papers*, iv. p. 464.

was really what it professed to be, the Duke's Council. For, when the burgesses of Richmond demanded toll of the citizens of York in 1528, the learned counsel of the Duke of Richmond, namely, Fairfax, Bowes and Babthorpe, appeared at the Austin Friars before Sir Anthony Fitzherbert and Richard Lyster, the King's Attorney, being then the Justices of Assize, and there on behalf of the Duke and the Burgesses of Richmond claimed toll by custom and prescription, while the Mayor and Aldermen on behalf of the city showed a charter of Richard I making the citizens of York free of tolls in England, Normandy, Gascony, Guienne, Picardy and all other places beyond the sea.[62]

On this occasion the Duke's Council was clearly acting as the Earl of Northumberland's might have done in similar circumstances and in the same capacity. Yet a few pages farther on[63] we find an entry to the effect that the Mayor having imprisoned certain persons for riotous behaviour, the Duke's Council called upon him to release them on bond to appear before the Duke's Council on January 10, 1530; also, the Mayor is to appear personally before the Council on Jan. 12, and answer the complaints against him. Nothing could illustrate more clearly the dual functions of the Duke of Richmond's Council.

These incidents add to the significance of the fact that of the seventeen members of the Council ten were lawyers. Of these, five were clerical dignitaries accustomed to the administration of Canon law, one, the Dean of York, being also a Doctor of Civil Law of Oxford; while of the five Common lawyers at least two[64] practised in Chancery and were versed in equity. It is clear that the new Council in the North was constituted with a view to the administration of equitable justice, and that it was intended to be what sixteenth century writers called it, a Court of

[62] Y. H. B. xi. f. 41.

[63] Ib. f. 62 ff.

[64] Bowes and Luke.

Requests[65] where justice should be administered on the principles of Civil and Canon law rather than on those of the Common law. It was only fitting, therefore, that those members of the Duke's Council who were also the King's Commissioners should receive a special payment of 4s a day ort hemselves and 12d for each servant during the time of journeying and sitting in causes of justice.[65a]

The Council's authority was derived from commissions of oyer and terminer, of the peace, and of inquiry of offices,[66] which, with letters patent, a Book of Diets, Check Roll, and Instructions signed by the King, were delivered to

[65] So called in 1547 in Y. H. B. xix. f. 38. Hudson, in his *Treatise on the Court of Star Chamber*, p. 116, says: 'In the time of Cardinal Wolsey, who entertained all suits and of all kinds, when the Court was overlayed he sent, at a clap, all causes arising within the Marches to those Courts; all within the Duke of Richmond's limits he remitted to his Council; and to the lady princess, to her; some, to the Duchy; some, to his Commissioners of Oyer and Terminer; and those within the County Palatine of Chester, to the Marches of Wales'. Sir Thomas Smith says, "King Henry the Eight ordained first a president, counsellors and judges, one for the Marches of Wales, at Ludlow, or elsewhere, another for the North parts of England at York, where be 'many causes determined'. These two are as be Parliaments in France. But yet if there be any matter of great consequence, the party may remove it at the first, or remove it afterwards to Westminster Hall, and to the ordinary judges of the Realm, or to the Chancellor as the matter is. These two Courts do hear matters before them part after the Common Law of England, and part after the fashion of the Chancery" (*De Republica Angliae*, ed. Alston, Bk. II. Ch. 17, pp. 83-4).

[65a] *L. & P.* xi. No. 164 (4). Those paid thus were Parre, Bulmer, Foljambe, Tempest, Eure, the Dean of York, Magnus, Tate, Fairfax & Bowes; Uvedale, Luke & Babthorpe received only 2s a day and 12d for each servant.

[66] 'An Inquest of Office is an inquiry made by the King's officer, his sheriff, coroner, or escheator, *virtute officii*, or by writ to them sent for that purpose, or by commissioners specially appointed, concerning any matter that entitles the King to the possession of lands or tenements, goods or chattels', the most important of these inquests being the inquisition *post mortem* (Blackstone, iii. p. 258). To superintend and regulate these inquiries the Court of Wards and Liveries was instituted, 32 H. VIII c. 46; but even before this the Council in the North had ceased to execute the commission of inquiry of office, which was not renewed with the other commissions in 1530.

the Council by the Duke's Secretary in August 1525.[67] The commission of oyer and terminer was an ordinary one enabling the Council to take all criminal cases including treason.[68] The commission of the peace, if, as is almost certain, it was the special commission of the peace given to the Council in 1530, gave it authority not only to publish summarily all breaches of the peace, but also to hear and determine causes between party and party.[69] The inclusion of the whole Council in the ordinary commissions of the peace completed its powers by giving it police jurisdiction in all the northern counties.[70]

So far as the evidence goes, in fact, the one real difference between Richmond's Council and its predecessors was the extension of its jurisdiction to the Marches. Hitherto only the Justices of the Peace in the North parts and the Lieutenant north of the Trent had equal authority in Yorkshire and the Marches, and in practice that authority, unless that of a Warden of the Marches were added to it, was, like the Council's, confined to Yorkshire. The Duke of Richmond's Council, however, was given both administrative and judicial authority in all the shires north of the Trent, save Durham. The condition of Northumberland had first convinced Wolsey of the need for restoring the Council in the North; and it was at Newcastle that its first sessions of oyer and terminer began on September 25, 1525.[71] Its equitable jurisdiction was as extensive as its criminal, and some of its best work was done in Westmorland.[72]

Nevertheless, this extension of the Council's authority

[67] *State Papers*, iv. p. 392.

[68] *L. & P.* iv. No. 1596.

[69] Ap. IV.

[70] *L. & P.* iv. No. 1610 (11).

[71] *Ib.* iv. No. 1596.

[72] Star Chamber Proceedings in the reign of Henry VIII (R. O.), vol. xvi f. 96-7; 'Christopher Godmond of Staffeley in Kendal and his wife Anne v. Sir Roger Bellingham'. For some Yorkshire cases, including one for alimony, see *Yorks. Star Cham. Proc.* i. No. xxxix; ii. No. xxiv.

to the Marches did not last long. The occasional visits of Justices of Oyer and Terminer to Newcastle and Carlisle were not enough to reduce the Border shires to order; and although Henry and Wolsey persisted for over two years in their attempt to rule the Marches from the Court by way of Sheriffhutton, it was, as might have been foreseen, an utter failure. At last, the reiterated demand of the Border officials and of the Council itself that some great and discreet nobleman should be made Warden of the East and Middle Marches to live in the country and keep all men to their duty, was acceded to.[73] In December, 1527, the Earl of Northumberland was made Warden of these Marches [74] and sent to govern them with the help of some of the Duke of Richmond's Council who now took up their residence in the Earl's household.[75] Shortly afterwards the same course had to be taken in the West March, and Lord Dacre was made Warden in June, 1528,[76] some of Richmond's Council likewise being sent to aid him.[76a] Thus the Wardenship of the Marches was in effect once more separated from the Lieutenancy in the North, and the Council's authority was again restricted to Yorkshire, save in matters of justice.

There, the Council's rule had been much more successful. As a court of equity it seems to have been decidedly popular, if we may judge from the demand made by the rebels in 1536 'that no man upon *subpoena*, or Privy Seal, from

[73] *L. & P.* iii. No. 3286; iv. Nos. 1482, 3552, 3689.

[74] *Ib.* iv. No. 3628.

[75] Calig. B. iii. 65; cf. *L. & P.* iv. Nos. 3689, 3796. The members of the Council in the North with Northumberland were Frankleyn, Tempest and Bowes. Oner members of this Council (*Ib.* vi. No. 145) were Sir George Lawson, Sir Ralph Ellerker and Sir Thomas Clifford, Captain of Berwick (*ib.* v. No. 286), and Sir William Eure (*ib.* v. No. 3689) who had been Warden of the Middle March and Keeper of Tynedale and Redesdale since May 1526 (*ib.* iv. No. 2176).

[76] *L. & P.* iv. No. 4419.

[76a] This seems a legitimate inference from a reference to the Duke of Richmond's Council in Cumberland in a letter from Higden, Magnus and Bowes to Wolsey in Oct. 1528 (*ibid.* iv. No. 4855).

Trent northwards, appear but at York, or by attorney, unless it be directed upon pain of allegiance, or for like matter concerning the king'.[77] Its chief weakness indeed, was that when it had given award the defeated party could obtain a *subpoena* returnable before the King in Chancery, or if the matter were determinable at Common law could begin a suit in the courts at Westminster; practices to which malicious defendants with thoroughly bad cases were much given.[78]

As a criminal court, however, the Council was regarded with dislike and resentment. This was chiefly because it dealt sternly with breaches of the peace, riots, affrays, and the like, and with offences against the statutes forbidding maintenance and livery, and the carrying of handguns and other weapons, whereas it left unpunished breaches of the statutes against usury, simony, false cloth-making, and suchlike. Or so the gentlemen said; the clothiers had a different tale. At the same time objection was taken to the composition of the Council, especially by the nobility and gentry who bitterly resented their subordination to a body composed of Wolsey's servants, most of them spiritual men: the North was Catholic, but it was as anti-clerical as the South.[79]

The Council, it must be admitted, had started badly by calling before it the leading men of the county and demanding from them recognisances for good behaviour, whether they had committed any offence or not.[80] This was regarded, probably rightly, as a device of Wolsey's to keep the northern nobles in subjection, and it was only

[77] Demands by the rebels in 1536, printed in Wainwright's *Yorkshire*, i. p. cxv ff.

[78] E.g. *L. & P.* iv. No. 2768.

[79] Lord Darcy's complaints against Wolsey, 1 July 1529 (*ib.* iv. No. 5749 and his petition against the Council in the North (*ib.* x. No. 186 (38).) The latter document is included among papers seized in Darcy's house in 1537, but the objection that the Council included too many spiritual men, valid in 1529, was not so after 1530; see Ap. II iv.

[80] *L. & P.* iv. No. 5749.

natural that his fall should be the occasion of a strong protest against the Council in the North. Lord Darcy took the lead, and besides the Articles of Complaint which he lodged against the Cardinal, drew up a petition to the King against the Council, which deserves quotation.

After reminding the King that by 'old antiquity and laudable custom' his subjects in all parts of his realm (the County Palatine only excepted) have the right to repair to his Courts of Record at Westminster where 'by the laws and Statutes sufficient and round remedies were provided against and for every offence done or to be committed contrary to the laws', the petition goes on to state that although 'there is no time of two titles within this your Realm as was in King Edward's days', nor 'ruffing like as was then of the Earl of Warwick and others', his subjects in the North 'live under certain your commissioners who at their pleasures may will us and others your subjects there, upon every light surmise and matter afore them'. But the head and front of the offending of the Commissioners is that they be spiritual men, 'not meet to govern us nor other temporal men within any shire or country within this your Realm, nor as we suppose it standeth neither with the one law ne the other ne the laudable custom of this your said Realm, that any spiritual men should sit upon murders, felonies and others divers causes that belongs as requires to such as should (after the due order of justice) govern and rule such great countries, as are in the bounds of their commissions'. Further, 'as great clerks do report there is no manner of State within this your Realm, that hath more need of reformation ne to be put under good government than the spiritual men, which we remit to the noble approved wisdom of your Grace and the lords of your Council. And whether (if so) they be meet to govern under such commission as they now have over us and your North parts. For surely they and others spiritual men, be sore moved against all the temporal men'. Finally, if, as the petitioners suspect, the

real reason for setting Commissioners to govern the North, is that their loyalty is doubted, then the Justices of Assize can at their half-yearly visits sufficiently ascertain the King of the affairs and state of the North parts.

As it was just the loyalty of the northern lords that Henry did suspect and had suspected for years, he was hardly likely to regard this plea for the abolition of the Council in the North. But he thoroughly appreciated the protest against government by spiritual men, and as he was anxious to have the support of the laity in the struggle with the Pope in which he had now engaged, he was willing to make concessions on this point. So the Duke of Richmond's Council was ordered (6 July 1529) to cancel all recognisances taken before it in 1525 of any person in Yorkshire,[81] and in the following year, the government of the North was reorganised.

[81] *Ib.* x. No. 186 (38).

CHAPTER VI.

The King's Lieutenant and Council in the North.

Wolsey's fall proved to be the turning-point in the history of the Council in the North. It had suited the Cardinal well enough to use as his agent of government a lord's council nearly every member of which was a servant of his own; but Henry VIII preferred to emphasise the connection of the government of the North with himself. So in June 1530 the Duke of Richmond's Council gave place to the King's Council in the North parts.[1] It is true that in membership the new Council differed little from the old and that many of the members remained members of the Duke's Household and Council down to his death in 1536;[2] but that it was a new Council is clear from the fact that while none of the new members[3] was in any way connected with the Duke, many of the Councillors, old as well as new, served the King as constables, stewards, or receivers of his castles or lordships beyond the Trent.[4]

From this change sprang two consequences of more

[1] In the York House Books, xi f. 98, is this entry: — "26 July 22 H. VII. It is agreed by the said persons that when the right reverend Father in God and the right honourable Bishop of Durham being Chief of the King's Council in the North parts at his repair and coming hither this night about the King's business shall be presented with three great fat pikes, 2s. in main bread, and 6 gallons of wine of all sorts and for the worship of this city".

[2] They were Higden, Magnus, Tate, Tempest, Eure, Fairfax, Bowes and Babthorpe (*L. & P.* iv. No. 6490 (14); *Inventories of the Wardrobes*, etc.)

[3] Bishop Tunstall of Durham, Sir John Neville of Snape, Lord Latimer's heir, Sir Marmaduke Constable of Flamborough, and Robert Chaloner, a lawyer; *ib.*

[4] See Appendix II iv.

importance than appears at first sight. The first was that as the only Crown lands beyond the Trent, other than those of the Duchy of Lancaster, which had not been assigned either to the Duke of Richmond or to the Wardens of the Marches, were the Duchy of York lands in Yorkshire, the jurisdiction of the King's Council in the North was once more confined to that county,[5] where it rested partly on a commission of oyer and terminer for criminal causes, partly on a special commission of the peace for Yorkshire, York and Hull, which was really a commission of oyer and terminer for causes between party and party.[6]

The second was that the severance of all connection with a lord's household left the Council without an official head, so that the King had to appoint a Chief Commissioner, who was almost at once called 'President of the Council in the North parts'.[7]

The first to hold the new office was Cuthbert Tunstall, Wolsey's successor in the Bishopric of Durham. The son of a well-known Yorkshire knight and a cousin of the Earl

[5] In a Star Chamber case of October 1530 (Star Chamber Proceedings, Hen. VIII, vol. 16. f. 96), it is stated that Sir Roger Bellingham of Burnshead in Westmorland having seized some land at Croke in that county belonging to Christopher Godmond and his wife, they appealed to the Duke of Richmond's Council, who after hearing both sides, awarded the land to the Godmonds and ordered Bellingham to pay costs and hand over all profits. After decree, however, he distrained the cattle they had on the land and refused to restore either them or it, until the Council ordered him to obey the decree upon the penalty of £100. "But so itt is . . . thatt the seid Duke and his Councell be removed from the seid County and have no longer commission or auctoritie to see your lawes executed within the seid Countye the seid Sir Roger perceyving the same and also perceyving thatt your seid subjectes be butt pore in respectt to the seid Sir Roger and allso nothyng regardynge the seid decrees nowe of late syns the seid departynge of the seid Duke and his Councell thatt is to sey the xvith day of June last past sent his servants", etc.

[6] Privy Seals, Series II. No. 630.

[7] Tonge, in his *Visitation of York in 1530*, p. 26, says, 'These be the arms of the Reverend father in God, Cuthbert Tunstall, Bishop of Durham, President of the Council from Trent northward to our sovereign Lord King Henry the viiith'.

of Westmorland, he had studied law at Oxford and Padua,[8] and was thought one of the most learned lawyers of the day.[9] Master of the Rolls in 1517, Bishop of London in 1522, and Keeper of the Seal in 1523, his training had made him an ideal head for such a court as the Council in the North now was, and in more favourable circumstances he might have left a deep impression on its history. But the times were difficult for an old servant of the Crown who was also lord of the greatest liberty in the land and at the same time a good Catholic. As Henry's policy in church and state developed, Tunstall, despite his saintly character and his great learning, fell into suspicion, first with his master and then with his countrymen. He was able to clear himself of a charge of heresy-treason brought against him when defending Catherine of Aragon in 1532,[10] but his success in doing so made his position as President of the Council in the North untenable. His authority was openly flouted;[11] and the Yorkshire Star Chamber cases increased in number and in gravity.[12]

Ere long Henry was forced to recognise that the North was far out of order and that for a time at least he must place over it a Lieutenant able to deal firmly with its growing turbulence. So, as the only man at once strong enough to enforce his authority and submissive enough to the royal will to make it safe to entrust him with supreme power, the Earl of Northumberland, already Warden of the

[8] He was at Balliol College in 1491, and at Padua won his L.L D; Foss, v. p. 237.

[9] Bishop Kennet's Collections, Lans, 980. f. 272.

[10] *L. & P.* v. No. 986.

[11] *Yorks. Star Chamber Proc.* i. p. 90.

[12] *Ib.* i, ii. Of the cases which can be dated, there were 3 in 1531, 55 in 1532, 5 in 1534, 11 in 1535. They include a serious riot in 1531 when the Nortons and Mallorys with many sanctuary men of Ripon attacked the Earl of Cumberland's eldest son and his servants (*ib.* ii. pp. 48 ff.), a quarrel between the Mayor and two Aldermen of York concerning the Guild of SS. Christopher and George in 1533 (*ib.* i. pp. 13 ff.), and the riots at Beverley in 1534 (*ib.* i. pp. 34-39; ii. pp. 99-114; *L. & P.* viii. No. 774; *Beverley Town Records* (Seld. Soc.) passim).

East and Middle Marches, was in January 1533 given the commission of array for Yorkshire which made him the King's Lieutenant there.[13] At the same time, certain changes were made in the membership of the Council which suggest that even now the control of the Crown over the North was very imperfect. Higden, Magnus, Tate, Tempest, Eure, Fairfax, Bowes, Babthorpe and Chaloner remained members, as did Lord Latimer and Sir Marmaduke Constable the Elder; but there seem to have been added men whose connection with Northumberland was already established: Lord Darcy,[14] Sir Robert Constable, one of his Councillors,[15] Sir Thomas Wharton, Comptroller of his Household and Steward and Constable of Cockermouth,[16] Sir Ralph Ellerker the younger, and William Frankleyn.

This solution of his difficulties was little to Henry's liking, who could not see why his authority should not make the meanest man respected in the North as in the South. Forced to realise that as a matter of fact it could not, and convinced that Richmond's Council had failed only because there were so many liberties in the North which his officers could enter only by sufferance, and because the men of the Marches knew no prince but a Percy or a Dacre,[17] he now set himself to unite with the Crown all the liberties beyond the Trent, and at the same to time to get into his own hands all the Percy and Dacre lands.

Other reasons for seeking a speedy solution of the problem of the North were not wanting. The rising discontent with his rule, and especially with his policy in religion, was already forcing him to look to his defences in all the outlying parts of his dominions. In Wales, the Lord President of the Council of the Marches was urging a series of reforms

[13] *L. & P.* vi. No. 13.

[14] *Ib.* xi. No. 215.

[15] *East Riding Antiq. Soc. Trans.* viii. pp. 66-7; *L. & P.* xii. pt. 2. No. 915.

[16] *Ib.* vi. Nos. 16, 150.

[17] *For. Cal. 1561-62,* No. 323; *ib. 1569-71,* No. 568.

which led up to the incorporation of the Principality with England in 1536.[18] In Ireland, a Geraldine revolt compelled him to give his serious attention to the island and to take the first steps towards its complete conquest. In the North, there were still alive men who in their youth had been active members of the White Rose party which had give Henry VII so much trouble throughout his reign, and who were now, in common with many others, owing to the doubt cast on the succession by the King's divorce, once more turning their thoughts towards the claims of Warwick's sister, the Countess of Salisbury, and her sons, the Poles. Should Lord Dacre lend his support to his Yorkist kinsmen, or should the vast territorial wealth and influence of the Percies pass from the submissive Earl of Northumberland to his brother Thomas — a man of a very different character — these claims might yet be a serious menace to the Tudor dynasty.

An inquiry into liberties in derogation of the King's rights in Yorkshire, made in the spring of 1535 by William Maunsell with the aid of the constable and four men in every township,[19] showed that the liberties, though numerous, would give little trouble. Many of them were already in the King's hands; of the others, most — and these the ones with the greatest franchises — were in the hands of ecclesiastics. They were, however, generally regarded as an intolerable nuisance because of the shelter they afforded to fugitives from the law, and the Parliament which had been engaged since 1529 in destroying clerical privileges could be trusted to make short work of them. The Act for Dissolving the Smaller Monasteries gave many of them to the King.[20] Another Act for Resuming Liberties to the Crown made the King's writ current in all parts of the land, gave to the King the appointment of all Justices of the Peace, of Assize, and of Gaol Delivery in all Liberties

[18] Skeel, *Council in the Marches of Wales*, p. 61-2.
[19] *L. & P.* viii. No. 515.
[20] 27 H. VIII. c. 28.

save Corporate Towns, and vested in the King alone the power of pardoning for treason or felony.[21] Thus all lords of liberties and franchises were deprived of their criminal jurisdiction, which was now transferred to the Crown; and it remained only to supplement this Act by another placing such restrictions on sanctuary-men as in effect abolished the great northern sanctuaries.[22]

The acquisition of the Percy and Dacre lands, without which these measures would be of little use, was more difficult. Against Lord Dacre Henry thought to use the same means as had been so successful against the Duke of Buckingham in 1521; but the Lords acquitted him of the charge of treason laid against him in 1534.[23] The lands that had been seized for the Crown in confident anticipation of his condemnation had therefore to be restored, though denuded of their stock and burdened with a heavy fine.[24]

Against the Percies other means had to be used, since the Earl gave no possible pretext for forfeiture. It was not without reason that the fifth and sixth Earls of Northumberland were surnamed respectively Henry the Magnificent and Henry the Unthrifty. The one having been ruined, partly by his own extravagance, partly by two enormous Star Chamber fines,[25] the other had inherited a burden of debt[26] which he increased by lavish gifts to unworthy favourites,[27] while the Wardenship of the Marches was such a drain on his resources that he was never able to

[21] 27 H. VIII. c. 24.

[22] 27 H. VIII. c. 19.

[23] *L. & P.* vii. No. 962.

[24] *Ib.* vii. Nos. 663, 676-7, 886, 895-6, 1270.

[25] *Ib.* i. Nos. 945, 961; *ib.* ii. pt. 1. Nos. 1836, 1861, 1870; *Holinshed*, iii. p. 645.

[26] £7,000 to private persons, £10,000 to the Crown; *L. & P.* v. Nos. 894, 895; *ib.* vii. No. 215.

[27] Southwell, writing to Cromwell concerning the value of Northumberland's lands in August 1537, says that he never saw a finer inheritance more blemished by the folly of the owner and the untruth of his servants than these of the late Earl; *ib.* xii. pt. 2. No. 548.

discharge his liabilities.[28] These embarrassments Wolsey had tried to turn to his master's advantage in 1527 when he proposed to put a governor over the Earl on the ground that he was too dull of wit to manage his own affairs and so could not serve the King unless some order were taken.[29] Henry Percy was a weakling, physically and morally, but he declared so stoutly that he would be no ward, that the Cardinal had to give up his plan for getting the Percy lands into the King's hands. Now another was formed, and at Cromwell's suggestion Northumberland's debts, still amounting to £10,000 in spite of the sale of his Kentish lands, were bought up and used as a lever to force him to free himself of his indebtedness to the Crown by surrendering the rest of his estates to the King.[30] Had he had a son the plan would almost certainly have failed, and as it was, notwithstanding the pressure put on him he was very unwilling to disinherit his brothers. Cromwell therefore turned to Sir Reynold Carnaby, one of Northumberland's gentlemen of the bed-chamber,[31] who had gained such influence over his master that all men cried out on the Earl for making 'a many knaves gentlemen to whom he disposed much of his living'.[32] By this man's means a breach was effected between Northumberland and his brothers;[33] then the Earl was persuaded first to seek leave from the King to dispose of his lands by will (Feb. 1535),[34] and afterwards to agree not only to

[28] The Wardenship was a very costly office. The fees of the Lieutenants and deputies of the East and Middle Marches, and the Keeper of Tynedale and his officers amounted to £204 6s. 8d. a year. Then there were 69 gentlemen-pensioners whose fees amounted to £194 6s. 8d. yearly (Calig. B. iii. 65). The Warden also had in pay 500 soldiers (*L. & P.* iv. No. 5920).

[29] De Fonblanque, *Annals of the House of Percy*, i. pp. 381-4.

[30] *L. & P.* v. Nos. 394-5; *ib.* vi. No. 1362.

[31] *Sadler Papers*, p. 391 n.

[32] *L. & P.* xii. pt. 1. No. 392. Carnaby obtained from the Earl leases of Corbridge and Rothbury for himself as well as an augmentation of arms and a crest (Harl. 1470. f. 119), and had his brother Cuthbert made Constable of Warkworth (Bates, *Border Holds*, pp. 116 n, 311-8).

[33] *L. & P.* xii pt. 1. No. 1090 (25).

[34] *Ib.* viii. No. 166.

leave them all to Henry but also to surrender them at once for an income of £1000 a year, on conditions which included the enfeoffing of Carnaby with the barony of Prudhoe.[35] So it came to pass that in February 1536 the Parliament that resumed the Liberties to the Crown and dissolved the smaller monasteries also assured the Percy lands to the King.[36] At last Henry had the satisfaction of knowing that there was now no hindrance to the establishment of the royal authority through all the land from Trent to Tweed.

What changes were now to be made in the government of the North is uncertain. A note of Cromwell's in July 1535 urging 'the establishment of a Council in the North'[37] suggests that the Council established in 1530 had ceased to exist. But against this must be set (1) certain references to 'the King's Commissioners' in 1535 which are hard to understand unless they refer to the Council in the North;[38] (2) a letter written to Lord Darcy by the Justices of Assize at York on 2 August 1536 [39] in which they inform, or remind, him that the King had directed a commission to Lords Darcy, Latimer and Talbot, the Justices themselves, and others, who are unnamed, to inquire into all misdeeds in the city of York, the towns of Hull and Newcastle, and the county of York, which commission is not on the Patent Rolls but appears to have been so like the Council's commission of oyer and terminer for criminal causes as to make it difficult to believe that it was not just to the Council in the North that it had been directed; (3) Tunstall, asking for a new commission for the Council in October 1537, remarked that the names of Darcy, Robert Constable and

[35] March, 1535; *ib.* No. 363. We may surmise but cannot know the part played in this affair by the charges respecting 'a supposed pre-contract' between the Earl of Northumberland and Anne Boleyn which were conveyed to him by Carnaby; Hodgson, *Hist. of Northumberland*, pt. 2. vol. iii. p. 367.

[36] 27 H. VIII. c. 47.

[37] *L. & P.* viii. No. 892.

[38] *Ib.* viii. No. 993; cf. Nos. 984, 991-2, 994-5, 1046.

[39] *Ib.* xi. No. 215.

other rebels were still in the commission.[39a] It is therefore most likely that the Council did as a matter of fact exist continuously from the departure of the Duke of Richmond from the North in 1532 to the beginning of the Pilgrimage of Grace in October 1536, and that Cromwell's note refers to the changes to be made in the government of the North when the Percy lands had finally passed into the King's hands. If so, it is probable that he contemplated abolishing the Lieutenancy of the North and vesting the whole administration there in the Council, or rather in a Lord President and Council, with a jurisdiction extending from the Trent to the Tweed. A similar course had already been taken as regards the Council in the Marches of Wales,[40] and it was actually taken as regards the Council in the North in the autumn of 1537;[41] so Henry and Cromwell may well have had it in view all through the intrigues that had transferred to the Crown most of the land north of the Trent. Whatever their intention may have been, however, it was not to be carried out at this time; for before any steps could be taken, the crisis of Henry's reign arose.

The story of the great revolt against Tudor government known as the Pilgrimage of Grace, is in the main outside the scope of this study; but it was too closely connected with the history of the Council in the North to be altogether passed over. Indeed, it is only through knowledge of the real causes of that revolt that we can appreciate the part played by the Council in the history of the North. The rising has generally been regarded as a purely religious one; but investigation shows that it was due at least as much to economic, social, political, and even personal, causes as to religious ones. Religion certainly played an important part in the rebellion; for without the religious motive the movement could not have had the same general character. Dislike to Henry's religious policy formed a common ground

[39a] *Ib.* xii. pt. 2. No. 915.

[40] Skeel, *op cit.* ch. 2.

[41] P. 152.

on which all classes could meet, and permitted forgetfulness of the fact that the several interests for which each was really striving were all in some measure incompatible with one another. Quite sincerely all Northerners united in opposition to the statute which made the King the Supreme Head of the Church with authority to reform and redress all heresies and abuses in the same,[42] and gave him the first-fruits and tenths,[43] which should belong to God. Even more they resented the suppression of the monasteries, through which 'the service of God was much minished, great number of masses unsaid and consecration of the sacrament not used . . . to the decrease of the Faith and spiritual comfort to man's soul'; while the temple of God was ruffed and pulled down, the ornaments and relics of the church irreverently used and, the tombs of honourable and noble men, the founders and benefactors of the abbeys, pulled down and sold'.[44]

Nevertheless, Catholic as the North was, and much as it detested Henry's doctrinal innovations, it was at that time Catholic by use and wont rather than by reasoned conviction, most of the people being 'rude of conditions and not well taught the law of God',[45] and it was by no means out of sympathy with the anti-clericalism of the South. Lord Darcy himself declared that 'there is no manner of State within this Realm that hath more need of reformation ne to be put under good government that the spiritual men';[46] and it is noteworthy that during the rising the commons shewed a good deal of distrust of the priests, and on one occasion said flatly that 'they would never be well till they had striken off all the priests' heads, saying they would but deceive them'.[47] It is still more

[42] 26 H. VIII. c. 1.
[43] 26 H. VIII. c. 3.
[44] *L. & P.* xii (1). No. 901.
[45] *Ib.* (2).
[46] *Ib.* x. No. 186 (38).
[47] *Ib.* xii (1). No. 687 (2).

significant that the commons denounced tithes as a grievance second only to gressoms, and that they insisted that beneficed men should pay taxes like other landholders.[48] Tenths and first-fruits too they wanted abolished,[49] though chiefly because the King, who had hitherto taken no money out of the North, his revenues there going to the upkeep of Berwick, would now take the tenths and first-fruits as well as the profits of the suppressed abbeys, so that in a few years there would be no money left in the country 'so that of necessity the said country should either patysh with the Scots, or of very poverty be enforced to make commotions'.[50]

It was, however, in connection with the suppression of the abbeys that the interweaving of economic with religious objections to recent changes in church and state was most clearly shewn. North of the Trent the monasteries were not as in the South mere useless survivals of a bygone age; they were still doing work necessary to the well-being of society. They relieved the poor and sick; in lonely places they gave shelter and hospitality to travellers; 'also all gentlemen much succoured in their needs with money, their younger sons there succoured, and in nunneries their daughters brought up in virtue, and also their evidences and money left to the use of infants in abbeys' hands, always sure there'. Many of their tenants too were their fee'd servants who by their dissolution would want refreshing both by meat, clothes, and wages, and would not know where to turn to have any living.[51] Nor must it be forgotten that to the abbeys' tenants the change of ownership brought peculiar loss; for every man who secured

[48] *Ib.* xi. No. 1080. Riots over the payment of tithe corn were frequent e.g. in August 1533 (*Yorks. Star Cham. Proc.* i. p. 95-6); and the second rising in 1537 began in Cumberland with the spoiling of the tithe-barns at Cockermouth (*L. & P.* xii (1). No. 185).

[49] Articles at Pontefract, No. 5.

[50] *Ib.* No. 6 (p. 5).

[51] *Ib.* No. 901.

a share of the abbey lands was entitled to demand a gressom of at least two years' rent from each of his new tenants. Since in Yorkshire alone fifty-three monasteries were dissolved in 1536, many of them having land in every northern county, the economic effect of the dissolution of the monasteries beyond the Trent can be more easily imagined than described. As the new lords, not content with the customary gressom, were demanding 4, 8, 10, or even 20 times the white rent, it is no wonder that the commons put in the fore-front of their demands one that 'the lands in Westmorland, Cumberland, Kendal, Dent, Sedbergh, Furness, and the abbeys' lands in Mashamshire, Kirkbyshire and Netherdale, may be by tenant-right, and the lord to have, at every change, two years' rent for gressom, and no more'.[52]

So far, indeed, as the mass of the people was concerned, the Pilgrimage of Grace seems to have been mainly the outcome of the discontent roused by the steady progress of enclosures, especially of intakes, and the rapid rise of prices, especially of rents and fines. To seek redress by law was worse than useless, as the King's tenants of Arclegarthdale found when one of their number, Anthony Pecock, acting for his fellows, obtained an injunction out of the Court of Star Chamber against Lord Conyers, the Steward of Middleham and Richmond, who had enclosed their common, depriving them of pasture- and lead-mining-rights; for Conyers simply imprisoned them all in one or other of the castles he ruled, Hornby, Middleham, or Richmond.[53] For lack of law the commons took to rioting; and when the Earl of Cumberland, the hardest landlord in the North,[54] enclosed the commons at Giggleswick in Craven, there was a great riot (June 1535) in which over four hundred men joined to pull down the hedges and dykes he had put up.[55] Nor did the act against enclosures

[52] Articles, No. 9.

[53] *Yorks. Star Cham. Proc.* ii. p. 178 ff.

[54] *L. & P.* xii (1). No. 919. [55] *Ib.* viii. Nos. 863, 892-3, 970, 991-3.

passed in 1536[56] afford much relief in the North, where it was an Act limiting fines that was really needed. Indeed, it served rather to increase the disorder by giving the commons a pretext for pulling down dykes and hedges on the ground that they were now illegal.[57]

Matters were made worse by a sharp rise in the price of grain in 1534-5[58] owing to bad weather and a partial failure of the crops which sent wheat up to 30s a quarter in Skipton Market in the December before the rising,[59] So great was the distress, indeed, that the Duke of Richmond's tenants were unable to pay him any rent at Lady Day;[60] and other landlords were doubtless in the same case. It is no wonder that when the commissioners for the subsidy tried to collect it in the 'high and wild parts' of the West Riding in April 1536, they found that they could not meet without the people assembling against them;[61] nor that during the rebellion the tenants everywhere refused to pay rent,[62] demanding their tenant-right[63] and saying openly that they would pay no more money, for they had it not.[64]

The North, in fact, was even then swarming with homeless beggars, once prosperous yeomen, who had been 'thrust owte of their owne, or els either by coueyne and fraude, or

[56] 27 H. VIII. c. 22.

[57] At York on 14 May 1536, a number of the Commons, smiths, bakers, coopers, glovers, and the like, having heard that Sir George Lawson, one of the burgesses sent by the city to the late Parliament, had said that it had been enacted that no Common should be dyked in or enclosed, cast down the dykes and gates wherewith the Mayor and Council had enclosed 'the half of Knavesmire to the profit of the city' and the loss of the poor freemen. Y.H.B. xiii. ff. 39, 47.

[58] Proclamations; of 22 Oct. 1534 and 25 March 1535; Cunningham, i. p. 543 n. 7.

[59] *L. & P.* ix. No. 949.

[60] *Ib.* No. 174.

[61] *Ib.* No. 319.

[62] *Ib.* No. 1294.

[63] *Ib.* Nos. 893 (3), 1080; cf. Art. 9.

[64] *Ib.* No. 678.

by violent oppression . . . put besydes it or by tyronyes and iniuries . . . so wearied that they (were) compelled to sell all',[65] and whose hard lot was now made hopeless by an act passed at this very time against vagabonds and sturdy beggars ;[66] so that there was no lack of loiterers and such-like idle fellows, the very stuff out of which rioters and rebels are most easily made. It is, in fact, clear that even if there had been no Reformation there must have been a rising in the North about this time, and that the Pilgrimage of Grace was at bottom just the first of the great agrarian risings that marked the transition out of the Middle Ages in England. The thoroughness with which the revolt was put down, combined with the equitable relief afterward afforded to the tenants by the Council in the North, is the real reason why the North took no part in the better-known rising of 1549.

That the social and economic aspect of the rising of 1536 has been obscured as it has, is due to the participation in it of classes whose interests were different from, and even antagonistic to, those of the peasants who formed the mass of the rebels. That in all the towns the commons should from the very first lean to the rebels[67] so that there was not at any time even a hint of antagonism between the poorer townsmen and the peasants, is not surprising ; it was a feature of every rising at this time. In the first place, the townsmen were as closely touched as the peasants by the rise of prices and by the enclosure movement ; in the second, capitalism was already dividing master from man, and jealousy between rich and poor, between governors and governed, had already disturbed the peace of more than one northern town.

There were less than a dozen Municipal Corporations north of the Trent, and such of the towns as were not still in all essentials manors were Manorial Boroughs, in which

[65] More, *Utopia*, ed E. Arber, p. 41.

[66] 27 H. VIII. c. 25.

[67] *L. & P.* xi. Nos. 663, 692 (2).

government was vested in a Steward or Bailiff, appointed by the lord, and the Twenty-four, who were probably at one time the suitors of the Court Baron and still as a rule held office by virtue of the tenure of certain lands. The government of most northern towns was therefore a close oligarchy. Even in the Municipal Corporations, where the officers were elected by the freemen, the franchise was so restricted that only a minority of the citizens were burgesses.[68] Inevitably, there was great jealousy between the commons and their more privileged fellows, and frequent suspicion that

> "... officers and all
> Do seek their own gain,
> But for the wealth of the Common
> No man taketh pain".[69]

That this was so at York we have already seen; and at the time of the rising it was noted that 'there is a murmur and great grudge amonges the commoners of this city at this day by reason of sinister information of certain malicious persons that intendyth more variance and dissension.[70]

The most interesting, and, as it proved, the most important case was at Beverley, where the rising first became serious. The town, which was one of the Archbishop of York's Liberties as well as a far-famed sanctuary, had been ruled for many years by twelve Governors assisted by a Common Council, here chosen by the inhabitants of the town from among the most substantial burgesses. The Governors were elected annually on St. Mark's Day (25 April) from among the Twenty-four, and at once presented to the outgoing Twelve to be sworn, so that no man should be Governor two years running. Now, Sir Ralph Ellerker, desiring to be a Governor, bought a messuage in the town, and was duly elected in 1534. Next year, contrary

[68] Webb, *Eng. Local Govt.*, i. pp. 175-89, 215-26, 244; ii. pp. 89-95, 127-211, 261-383.

[69] Crowley, quoted by Ashley, *Econ. Hist.* i. pt. 2. p. 49.

[70] Y. H. B. xii. f. 77.

to custom, he sought re-election and to that end put it into the commons' heads that they should have liberty to choose whom they would to be Governor. Having got his own way by violence against the better sort of townsmen, of whom he kept fourteen shut up in the Common Hall during the election, he discharged his opponents from the freedom of the town. They at once appealed to the Archbishop, and finally to the Court of Star Chamber. An order in their favour was made in November 1535, directing the Archbishop to order the election and 'refrain the Commons of such perversity and great will'. The Archbishop, claiming the right to order the affairs of the town whenever there was variance regarding the election, nominated twelve Governors in December 1535, all of his own party, and when St. Mark's Day came round, with the assent of the Governors deferred the election. The commons, who had gone out to Cawood to ask his assent to the election, believed that it was deferred so that the Archbishop should henceforth have the nomination of the Governors, as by charter the inhabitants should lose the free election if not made on St. Mark's Day. They therefore broke into the Common Hall and elected and swore in twelve of their number to be Governors. The case was again taken to the Star Chamber, where it was apparently decided against the commons.[71] It is significant that the leaders of the rising here were those of the commons' party and that the revolt began with an attack on the Archbishop's Governors.[72]

It is more surprising that the governing classes in the towns joined the Pilgrimage of Grace as they did, so that very few towns offered any resistance to the rebels: York, Hull, Newcastle and Carlisle make up the list; and they were half-hearted. These classes, however, had grievances of their own which led them to lend a willing ear to the commons. The West Riding clothiers had recently had

[71] *Yorks. Star Cham. Proc.* i. p. 34-9; ii. p. 99-104, 105-14; M. Bateson, *Beverley Town Records* (Seld. Soc.); *L. & P.* viii. No. 774; ix. No. 902

[72] *Ib.* xxi. pt. 1. No. 392.

a sharp contest with the Council in the North over an inquiry into the prevalence of the practice of flocking loosely-woven cloth by stretching it on a stone and rubbing into it finely-chopped wool and flocks, a fraud to which the West Riding clothiers were much addicted.[73] Not a shred of evidence could be obtained against a single weaver in either Leeds or Pontefract either by the Council or by the special commissioners afterwards appointed to make the inquiry;[74] but the clothiers were still sore when a new grievance was added by the passing of an act for the true making of woollen cloths,[75] ordering them to weave their cloths to certain measurements, to weave their marks into the cloths, and to affix a seal specifying the length, any deficiency to be punished by forfeiture of the cloth. Rumour made the penalty forfeiture of all the maker's goods,[76] and this act brought into the rising all the clothiers, who otherwise had no interest in and little sympathy with the peasants' wrongs. Pontefract, Knaresborough, Wakefield, Bradford, Halifax, and the rest of the clothing-towns joined the commons without hesitation,[77] and when the rebels went to Doncaster to swear the Mayor and commons, 'never sheep ran faster in a morning out of their folds than they to receive the said oath'.[78]

Then there were the men of the Liberties of St. Peter of York, of Ripon, Beverley and Hexham, of Whitby and Tynemouth, and above all of Durham, who had a special grievance in the act for resuming Liberties to the Crown.[79] Apart from the fact that they were exceedingly proud of the franchises they had vindicated against the Plantagenets

[73] The practice had been forbidden by 3 H. VIII. c. 6 which fixed the penalty at 40s and exposure on the pillory, altered by 6 H. VIII. c. 9 to a fine of 20s on each web. See *A. P. C.* xx. p. 163 for an account of the process.

[74] *L. & P.* vi. Nos. 1211; vii. No. 31.

[75] 27 H. VIII. c. 12.

[76] *L. & P.* xi. No. 768.

[77] *Ib.* Nos. 67-8, 702, 729, 760, 1392.

[78] *Ib.* No. 774.

[79] Art. 17.

themselves, this act, together with the one against sanctuary-men, in striking at a fruitful source of disorder, not only brought dismay to fugitive criminals and insolvent debtors, but also robbed the dwellers in the Liberties of profitable and therefore valued privileges, the loss of which they naturally resented.[80]

The part played in the rising by the gentry needs more explanation. In the main, their grievances, apart from religion, were purely political. Save for the small White Rose party, bound to the Yorkist — or rather, the Neville — cause by ties of kinship or friendship, the northern gentry had always fought for Lancaster and a constitutional monarchy. They were still of the same mind and objected strongly to the statutes ordering the succession, refusing as good Catholics to admit the Lady Mary's illegitimacy and resenting the power given to the King of disposing of the Crown to which all men owed allegiance, the more so because they believed the intention was to enable Henry to make his nephew, the King of their old enemies, the Scots, his heir.[81] Holding that 'a prince should be made king to defend the realm, and rule his subjects virtuously by justice mixed with mercy and pity and not under displeasure by rigor to put men to death',[82] they were exasperated by the statute of treasonable words,[83] which forbade men to 'speak of the King's vices, which men may say truly had most need to be spoken on and reformed of all things, for if the head ache, how can the body be whole, and therefore the sin of a prince that reigns may be punished'.[84]

In the eyes of the gentlemen not the least of Henry's political sins was the exclusion of the old nobles from his Council in favour of 'new men' who regarded their prince's

[80] Art. 16.
[81] *L. & P.* xii (1). Nos. 6, 901 ; cf. Art. 3.
[82] *Ib.* xi. No. 1244.
[83] 26 H. VIII. c. 13.
[84] *L. & P.* xi. No. 1244 ; xii (1). No. 901 (2) ; cf. Art. 19.

love above the Commonwealth.[85] All the hatred they had once had for Wolsey they now felt for Thomas Cromwell, with whom they coupled Cranmer, Audeley and Rich, the 'subverters of the good laws of the realm, and the first inventors and bringers in of the heretics';[86] but Cromwell was the worst, 'a Lowler and a traitor',[87] and a very envious enemy to the King, 'in that he excites him to break the oath that he made at his coronation'.[88] The Vicar-general's share in the suppression of the monasteries was known to all; and his share in the disinheriting of Sir Thomas Percy was more than suspected.[89] Moreover, the Yorkshire gentlemen had a grievance of their own against the all-powerful minister in that he had twice interfered with their administration of justice: once, to hale the Grand Jury before the Court of Star Chamber and fine them heavily for acquitting William Wicliff of the murder of Ralph Carr of Newcastle;[90] then again, to stop the arraignment of his nephew's servant, George Dakyn, for the heinous murder of one of Sir Ralph Eure's servants;[91] so that men cried out that 'his servants and eke his servants' servants think; to have the law in every place here ordered at their commandment ... so that whatsoever they will have done must be lawful, and who contraries them shall be accused of treason, be he never so true a man'. For following such-like evil counsellors had Edward II and Richard II been deposed; and what had been might be again.[92]

As for the Parliaments that had passed the statutes that the northern men so hated, they were of no authority or virtue; for if they were truly named, they should be

[85] *Ib.*
[86] Art. 8.
[87] *L. & P.* xii (1). No. 901.
[88] *Ib.* xi. No. 1244.
[89] Carnaby had just passed into his service; *ib.* ix. No. 895.
[90] *Ib.* xiii. No. 457; xii (1). No. 6.
[91] *Ib.* No. 539 (25).
[92] *Ib.* xi. No. 1244.

called Councils of the King's appointment and not Parliaments. There should be such a reformation of the election of the knights of the shire and the burgesses as would exclude the King's servants from the House of Commons and secure for each shire and burgh adequate representation by those who knew its needs and had its interests at heart.[93] They were equally desirous that the old customs of the House of Lords, always used before the last Parliament, should be revived: namely, that matters touching the Faith should be referred to Convocation and not discussed in Parliament; that the first act of the House should be the affirmation of Magna Carta; and that bills touching the King's prerogative, or between party and party, should be scanned by the learned counsel in case they should perceive anything in it prejudicial to the prerogative or to the Commonwealth.[94]

Political as were most of the demands of the gentlemen, they were not without their economic grievances also. The statute of uses and wills,[95] in forbidding the creation of trusts and the disposition of land by will, put irksome restraint on private men's liberty to deal as they would with their own, preventing the gentry from providing dowries for their daughters and portions for their younger sons, making mortgages illegal, and upsetting the whole credit system of the country. The suppression of the monasteries, too, affected them as much as the commons. To them they turned for loans in time of need; to them they sent their daughters to be educated; to them they entrusted their title-deeds and money for their young children.[96] From them, too, they had much of their own living, serving them as stewards and so forth for fees small indeed but very useful to the needy northern gentry.

[93] *Ib.*; cf. Art. 12. They wanted burgesses for Beverley, Ripon, Pontefract, Wakefield, Skipton and Kendal to be added to those already sent up for York, Hull, Newcastle, Carlisle and Appleby; *ib.* xii (1). No. 361 (ii).

[94] *Ib.* xii (1). No. 901.

[95] 27 H. VIII. c. 10; cf. Art. 18.

[96] *L. & P.* xii (1). No. 901.

To all these causes of discontent must be added another — perhaps the most important since it gave the revolt its leaders, — the assuring of the Percy lands to the King. Though Henry affected to believe that the title of Middleham, Sheriffhutton and Barnard Castle, the old Neville lands,[97] was a chief cause of the rising, White Rose influence seems to have been confined to those lands, and the only leader who can with certainty be said to have belonged to the party is Lord Darcy, who had long been chafing at the policy of the government and had even sought the intervention of Charles V and James V with a view to the restoration of the old order.[98] Elsewhere, Sir Thomas Percy was named, apparently with truth, 'the lock, key and wards of this matter'.[99] This was specially clear in Northumberland, where there was not a king's man but the Carnabys and the Greys of Wark and Norham, the deadly foes of the Percies;[100] but it was almost as clear in Yorkshire, where nearly all the leaders were the fee'd servants of the Percies or one of the abbeys, if not of both. Four of them were actually members of Northumberland's Council: — 'the Grand Captain', Robert Aske, who was one of the Earl's legal advisers;[101] Sir Robert Constable, the leader of East Yorkshire, lord of Flamborough and

[97] *Ib.* No. 1269. Only the names of the first two castles are legible, but the last must be Barnard, the third of the Kingmaker's Yorkshire castles.

[98] Sept. 1534; *ib.* vii. No. 1206.

[99] *Ib.* xii (1). No. 369.

[100] *Ib.* xi. Nos. 504, 1293-4; xii (1). No. 1090.

[101] In *Collectanea Topographica et Genealogica*, i. p. 20 n it is stated that on a manuscript which used to be in the library at Middlehill is written: — "Memorandum that I, Robert Aske, servaunt unto the Right honorable the Erle of Northumberland, hath rescevade of my said Lord and Master in the battlement above Sainte Steven's Chapel, at Westmon, the xviith day of May in the xixth yer of king Henry the VIII as doth aper in the end C li". His father, Sir Robert Aske, wore the Percy livery and accompanied the fifth Earl when he went to meet Margaret Tudor and escort her to the Border on her way to be married to James IV of Scotland; Leland, *Collectanea.*

thirty-six other manors, who was steward of Northumberland's lordships of Pocklington and Leconfield and surveyor of his parks and game, as well as steward of Bridlington, Watton, Howden, Marshland and Acaster;[102] Roger Lassells, one of the chief leaders of Richmondshire and Allertonshire, who was steward of Topcliff and Spofforth for the Earl as well as steward for the Abbot of Byland and had served Sir Thomas as his deputy in the East March;[103] and William Stapleton, the leader of Beverley and Holderness, who was the Earl's attorney[104] as well as feodary of his Yorkshire lands.[105] Also, Sir Stephen Hamerton, who led the commons of Craven, was steward of the Percy Fee there;[106] and John and Richard Norton, who led Ripon, were foresters-general of all Northumberland's forests, parks, etc. in Yorkshire,[107] Richard, who had been brought up in the late Earl's household,[108] being also steward of Horton for the Abbot of Jervaulx.[109] It cannot be proved, and it ought not to be assumed, that the rebellion of 1536 was deliberately stirred up by the Percies and their retainers; but it was surely not by mere chance that so many of them took so prominent a part in the Pilgrimage of Grace, and that from the first it was openly said in London that the Earl of Northumberland's brother had brought 30,000 men to join the commons in revenge for the wrong the King had done him when he wished to be declared heir to the earldom.[110] Even if

[102] *East Riding Antiq. Soc. Trans.* viii. p. 66-7.

[103] *L. & P.* vii. No. 762; xi. No. 1155 (4); xii (1). Nos. 29, 392; *Antiq. Rep.* iv. p. 350-1; Calig. B. iii. 65. He married Margaret, daughter of Sir John Conyers or Norton, and sister of Richard Norton; Whitaker, *Richmondshire*, ii. p. 182.

[104] *L. & P.* ix. No. 895; xi. No. 818; xii (1). No. 392.

[105] 27 H. VIII. c. 47.

[106] de Fonblanque, *op. cit.* i. p. 335.

[107] Whitaker, *Craven*, p. 502 n.

[108] Calig. C. i. 377; Confession of Christopher Norton, 14 Feb. 1570.

[109] Whitaker, *Richmondshire*, i. p. 67.

[110] *L. & P.* xi. Nos. 566, 714.

they can be charged with no more than fishing in troubled waters, the part they played in the rising affords the only possible justification of the policy that Henry VIII had been pursuing towards the northern landowners.

All through the spring and summer of 1536 the restlessness and disorder of the North had been growing. The riotous election of Governors at Beverley in April, the Knavesmire enclosure riot at York in May, the difficulties of the subsidy commissioners in the high and wild country of the West Riding, and several riots in Cumberland, all shewed clearly enough that trouble of some sort was brewing among the commons beyond the Trent. In August a seditious outbreak in York at the acting of a religious interlude of St. Thomas the Apostle induced the King to order the apprehension and imprisonment of any Papists who should, in performing interludes founded on any portions of the Old or New Testament, say or make use of any language which might tend to excite the spectators to any breach of the peace.[111] Yet the new owners were allowed to take possession of several of the dissolved abbeys without opposition, the resistance of the Canons of Hexham to the commissioners sent to dissolve the abbey and hand it over to Carnaby (28 Sept.)[112] being the solitary exception. Therefore, when the commons of Masham and Netherdale, the tenants of the late Duke of Richmond,[113] made desperate by the demand for the God's-penny[114] and a gressom due on the change of lord as well as a year's rent,[115] together

[111] *Kings' Letters*, ed. R. Steele, ii. p. 238.

[112] *L. & P.* xi. No. 689. It was believed that Hexham was given to Carnaby in reward of his services in getting the Percy lands for the King; *ib.* No. 449. As a matter of fact, Northumberland bought it for him; *ib.* No. 529.

[113] He died in July 1536; *Dict. Nat. Biog.*

[114] A God's penny was a relief of a silver penny paid as earnest money in addition to the gressom at a change of lord in some parts of the North as in Kendal and Holmcultrum; Nicolson & Burn, i. p. 18. Cf. 'The Heir of Linne', *Percy Reliques*, ii. pp. ll, 15.

[115] Because none had been paid at Lady Day; *L. & P.* xi. No. 174.

with serjeant's oats and tithes, all of which fell due at Michaelmas, rose on September 30,[116] refusing to pay their rents and swearing to suffer no spoils nor suppression of abbeys or parish churches,[117] it seemed, even when they were joined by Dent, Sedbergh, Middleham and Richmond,[118] only an ordinary riot, though larger and therefore rather more serious than usual.[119]

At first, indeed, it was no more, the commons going home after being sworn. But simultaneously the commons of North Lincolnshire had risen against the subsidy commissioners;[120] and on Sunday, 8 October, the leaders of the commons at Beverley,[121] on receiving a letter from Robert Aske,[122] who had taken the oath to the commons in Lincolnshire a few days before,[123] rang the common bell and swore all men to their party.[124] Two days later, having been joined by the men of Howden and Marshland,[125] they set out, some under Stapleton to besiege Hull, some under Aske to demand admission to York.[126] Both towns opened their gates to the Pilgrims of Grace, as the rebels were now called,[126a] York on the 16th,[127] Hull on the

[116] *From L. & P.* xi. No. 841 it appears that Dent, etc. rose on a Monday, and from *Ib.* No. 563 (2) that they were up before Friday, 6 Oct.; they must therefore have risen on Monday, 2 Oct. Mashamshire and Netherdale had risen two days earlier (*ib.* xii (1). No. 786); i. e., the rebellion in Richmondshire began on Saturday, 30 Sept.

[117] *Ib.* xi. No. 678.

[118] *Ib.* No. 841.

[119] *Ib.*

[120] 30 Sept; *ib.* xi. No. 536.

[121] *Ib.* xii (1). No. 392, Stapleton's Confession.

[122] *Ib.* xi. No. 841; xii (1). No. 370.

[123] *Ib.* No. 6. It is worthy of note that Sir Thomas Percy said he had been hunting in North Lincolnshire a few days before the rebellion; *Ib.* xii (2). No. 393.

[124] *Ib.* xii (1). No. 392. They spent the first day in revenging old grudges on the Archbishop's men.

[125] *Ib.* xi. No. 622.

[126] They wanted to go to Cawood to slay the Archbishop; *ib.* xi. Nos. 628, 689, 841.

[126a] *Ib.* xi. No. 828 (xii). [127] *Ib.* xi. No. 759.

20th.[128] Meanwhile a new rising, begun at Middleham on the 11th,[129] had spread over all the upland from the Solway to the Ribble, and the commons were everywhere forcing their lords to swear to new laws concerning gressoms, noutgelt and serjeant's food.[130] Beyond the Tyne, John Heron had brought the men of Tynedale and Redesdale to the aid of the Canons of Hexham and had raised all Northumberland for the Percies.[131] In Durham, an attack on Barnard Castle[132] was followed by a general rising of the men of the Bishopric, led by the Earl of Westmorland's Councillors, for the recovery of their lost franchises.[133]

No one interfered with the Pilgrims ; not even the Council in the North whose duty it was to organise resistance to rebellion. Northumberland was lying ill at Wressell when Aske led the Howden men to the gates of the castle, shouting, 'Thousands for a Percy' ;[134] Tunstall fled north to Norham as soon as he heard of the rising ;[135] Latimer in the North Riding, Eure, Tempest and Bowes in Durham, after a slight show of resistance, placed themselves at the head of the revolt ;[136] Ellerker did the same at Hull on receiving a message from Sir Thomas Percy ;[137] Higden remained at York to receive Aske and his Pilgrims in state ;[138] Archbishop Lee, Magnus, Marmaduke Constable, Babthorpe and Chaloner, the only other members of the Council then in Yorkshire, hastened to join Lord Darcy

[128] *Ib.* xii (1). No. 392.

[129] *Ib.* xi. No. 677.

[130] *Ib.* xi. Nos. 563 (2), 635, 872, 1299 ; xii (1). Nos. 392, 687 (2), 698 (3), 1034.

[131] *Ib.* xi. Nos. 504, 1293-4 ; xii (1). No. 1090.

[132] *Ib.* xii (1). Nos. 416, 775. The attack, made by the tenants, was led by Anthony Pecock, for which cause he was hanged in chains on Richmond Moor in Feb. 1537.

[133] *Ib.* xi. No. 945 ; xii (1). Nos. 6, 29, 901.

[134] *Ib.* xii (1). Nos. 392-3.

[135] *Ib.* Nos. 22, 369.

[136] *Ib.* xi. Nos. 909, 921 ; xii (1). Nos. 6, 369, 789, 1022.

[137] *Ib.* xii (1). No. 392.

[138] *Ib.* xi. No. 759 ; xii (1). No. 1018.

at Pontefract,[139] and at Aske's summons they not only yielded the castle, the key of the North, and took the Pilgrim's oath,[140] but put themselves at the head of the revolt.

Why the members of the King's Council in the North thus joined the rebellion against him is clear enough. Darcy as an old official cast aside for new men,[141] the Archbishop as lord of Hexham, Ripon and Beverley, Higden as Dean of St. Peter's, Magnus as Master of St. Leonard's Hospital, Latimer as High Steward of Ripon,[142] Eure as Escheator, Tempest as Seneschal and Comptroller, of the Bishopric, Bowes as Steward and Constable of Barnard Castle, and all three as the Councillors of the Earl of Westmorland,[143] Babthorpe as a Councillor of both Northumberland and Darcy,[144] Chaloner as Darcy's Councillor

[139] *Ib.* xi. No. 826 ; xii (1). Nos. 6, 1022 ; xii (2). No. 393.

[140] *Ib.* xii (1). No. 6.

[141] Sir Thomas Darcy of Templehurst, married Edith, Lady Neville, in 1498 and was guardian of her son, the Earl of Westmorland, and of his lands during his minority. He was made Lieutenant for the Duke of York in the East and Middle Marches, 16 Dec. 1498 (*Rot. Sc.* ii. p. 532), Constable and Steward of Sheriffhutton 24 Feb. 1500 (Pat. 15 H. VII p. 2. m. 11), and Supervisor of the royal castles in Yorkshire and Receiver of their revenues in succession to Sir Richard Cholmley, 12 June 1503 (Pat. 18 H. VII p. 2. m. 10), and was summoned to Parliament as Lord Darcy in 1504 (*G. E. C.*). After Henry VIII's accession he received new commissions as Chief Justice of the Forests North of the Trent (*L. & P.* i. No. 188), Warden of the East and Middle Marches (*ib.* Nos. 189, 283), Captain of Berwick (*ib.* No. 190), Overseer of the lordships assigned for the maintenance of Berwick (*ib.* No. 192), Steward, Receiver, Constable, etc. of Bamborough (*ib.* No. 193), Steward of Raby, Brancepeth, and other Neville lands during the Earl's minority (*ib.* No. 191), and Steward of the lands of Sir Ralph Grey in Northumberland and the Bishopric, and Constable of Chillingham and Wark during the minority of Thomas Grey, Darcy's nephew (*ib.* No. 201). From these offices he had been ousted by Wolsey (*ib.* iv. No. 5749), losing the Wardenship to Dacre in Dec. 1511 (*ib.* i. No. 2035) and the Captainship of Berwick to Sir Anthony Ughtred in August 1515 (*ib.* ii. No. 549). Thenceforth he was a man with a grievance.

[142] *Ib.* xii (1). No. 1022.

[143] *Ib.* xi. No. 921.

[144] *Ib.* xii (1). No. 349. Northumberland gave an annuity of 5 marks to 'William Bagthorpe (*lege* Bapthorpe, i. e. Babthorpe), learned man in the

and as the 'fee'd man' of the Dean and Chapter of St. Peter's,[145] had as much reason as Sir Robert Constable and the other retainers of the Percies and the abbeys for disliking the legislation of 1535-6 and for using the rising of the commons to get it undone. Their action is therefore the clearest proof both of the nature and the difficulty of the problem with which the Tudors had to deal in the North.

When the Duke of Norfolk made his tardy appearance before Doncaster at the head of some 8000 cold and hungry men,[146] he found himself faced by 40,000 men, well-armed and well-mounted, led by 'the worshipful of the whole shires from Doncaster to Newcastle'.[147] Unable to advance or to retreat, only too well aware that the sympathies of his men were with the Pilgrims, and confronted by all the flower of the North, the King's Lieutenant had no choice but to treat with the rebels he had been sent to destroy, and grant a truce while Ellerker and Bowes went up to Windsor to lay the Pilgrims' demands before the King himself.[148]

With the rest of the story, the grant of the rebels' terms by the King, the growing dissension between the commons and the gentry, the slow realisation by the leaders of the fact that in the King they had to do with a man less honourable than themselves, the ill-advised rising for self-protection that gave him the pretext he sought, the vengeance of one who could not forgive those who had made him afraid, with all this we have no concern beyond noting the part played in it by the Council in the North.[148a]

law, in consideration of his discrete counsil'; de Fonblanque, *op. cit.* i. p. 407 n. 2.

[145] *L. & P.* xii (1). No. 349; vi. No. 612.

[146] *Ib.* xi. No. 909.

[147] *Ib.* xi. No. 759.

[148] *Ib.* xii. (1). No. 6.

[148a] It has been told in detail by Madeleine and Ruth Dodds in *The Pilgrimage of Grace, 1536-37, and the Exeter Conspiracy, 1538*, published since this chapter was written.

From the day that Sir Ralph Ellerker, Sir Thomas Hilton,[149] Robert Bowes, and Robert Chaloner went into Norfolk's camp to arrange the truce,[150] if not from the day that the Archbishop of York arranged with Aske for the surrender of Pontefract, the Council in the North took the direction of the rising into its own hands. During the truce it gave all its energies to reconciling the differences between the several parties among the Pilgrims. The landlords made terms with their tenants[151] which, to its credit be it said, the Council seems to have enforced in later years as if they had the force of law; the Mayor and Council of York agreed to an audit of the Chamberlain's accounts;[152] the Archbishop of York made an indenture with the burgesses of Beverley concerning the election of their Governors which lasted till the town obtained a charter of incorporation from the Crown in 1574;[153] and Northumberland gave a grudging assent to his brothers' assuming the rule of the Marches in his name.[154]

It was the Council too that arranged for a conference at York in which every shire and wapentake was represented by two or more delegates to hear and discuss the King's answer to the demands laid before him.[155] In the debate on peace or war which followed, the Council, through Babthorpe, threw its influence on the side of peace against Sir Robert Constable who would have offered no terms till the whole country from Trent northwards had been made sure.[156] At the Council's instance the clergy were required to consult concerning the Articles of the Faith and the Liberties of the Church while the 'learned counsel and wise men' consulted together for the reformation of

[149] He was sheriff of Durham and Steward of Tynemouth.
[150] *L. & P.* xii (1). No. 6.
[151] Art. 9 of the Rebels' demands.
[152] Y. H. B. xii. f. 77.
[153] *MSS of Corp. of Beverley*, p. 53-5.
[154] *L. & P.* xii (1). Nos. 392, 1090.
[155] *Ib.* xi. Nos. 1115-6, 1135.
[156] *Ib.* xii (1). Nos. 392, 466 .

evil laws ;[157] and it was with the advice of Tempest, Bowes, Babthorpe and Chaloner, the four legal members of the Council, that the Articles for treaty with the King were drawn up by the lords, knights and commons at Pontefract.[158]

These Articles touched on all the grievances which had moved the Northerners to revolt. Some referred to national grievances : — heretical books were to be destroyed ; the supremacy of the Church touching the cure of souls, and the consecretation of bishops were to be restored to the See of Rome, but tenths and first-fruits were to be abolished ; the suppressed abbeys and the Friars Observants were to be restored to their houses ; the Lady Mary was to be declared legitimate so that the Scot might be barred from the succession ; the statutes concerning uses and wills, and treason for words, should be repealed, as well as one against cross-bows and hand-guns. Others referred to peculiarly northern grievances : — the lands in Westmorland, Cumberland and the rest of the upland, and the abbeys' lands in Yorkshire should be held by tenant-right, and the lord should take at every change a gressom of two years' rent and no more ; the statute against enclosures should be enforced and all enclosures made since 1489 should be pulled down, and large forests and parks destroyed ; benefit of clergy and right of sanctuary should be restored as they were at the beginning of the reign ; and the Liberties of the County Palatine of Durham, Beverley, Ripon, S. Peter of York, and such-like should be restored. Most important for us, however, were the Articles requiring that by authority of Parliament all recognisances and statute penalties newly forfeited during the time of the Commission might be pardoned and discharged, as well against the King as stranger; that the common law might have place as at the beginning of the reign, all injunctions being denied unless the matter were heard

[157] *Ib.* xii (1). Nos. 6, 901 (25).
[158] *Ib.* xii (1). Nos. 29, 901.

in the Chancery and there determined; and that no man upon *subpoena*, or Privy Seal, from Trent northward, appear but at York, or by attorney, unless it were directed upon pain of allegiance, or for like matter concerning the king. Clearly, the Council in the North was not above using the Pilgrimage of Grace to strengthen its own position and authority against the Courts at Westminster: already the rivalry that was to destroy the Court at York had begun. Demands for the condign punishment of heretics and extortionate officials, and of Cromwell, Audley and Rich as subverters of the good laws of the realm and the bringers-in of heretics, and for a free Parliament to meet at Nottingham or York, concluded a list of Articles which, if granted, would have undone all the labours of the last seven years.[159]

Nevertheless, Norfolk had to accept the terms offered and promise a free parliament and a free pardon under the King's seal.[160] To Henry it was intolerable that his 'honor' should not be saved by the punishment of even a few persons;[161] but he yielded with the best grace he might, and the pardon was sent down by Lancaster Herald and proclaimed in every market town north of Doncaster.[162]

The King had, of course, no intention of keeping his word[162a]; but time was needed to garrison and fortify the seaports and strongholds beyond the Trent and to widen the breach between the gentlemen and the commons that had appeared at Pontefract.[163] While the gentlemen, especially those of the Council in the North, were being given a gracious reception at Court and kept in the offices they had held under the Crown before the rising, the commons were being called on to pay their rents and all sums

[159] *Ib.* xi. No. 1246.
[160] *Ib.* xii (1). No. 6.
[161] *Ib.* xi. No. 1410.
[162] *Ib.* xii (1). No. 6; xi. Nos. 1236-7, 1392.
[162a] For the King's policy at this time see *ib.* xi. No. 1410.
[163] *Ib.* xi. No. 1244; xii (1). No. 29.

due to the king, without regard to the Articles; and the Archbishop was collecting the Tenth[164].

The result was all that Henry could have hoped for. Norfolk, who had been chosen (Dec. 1536) to succeed Northumberland as Lieutenant in the North,[165] had not yet taken up his new duties when a fresh rising broke out, not only in the high and wild country,[166] but in the East Riding, where Sir Francis Bigod of Mulgrave Castle, made reckless by the news that his goods were to be distrained for the King,[167] to whom he was deeply in debt,[168] led an ill-planned and ill-fated attack on Hull and Scarborough.[169] The new Lieutenant was therefore free to do the 'dreadful execution upon a good number of the inhabitants,[170] that the King hungered for. Taking the Council in the North as the instrument of the royal vengeance, he made it choose seventy-four 'poor caitiffs' to suffer death at Carlisle, hanging them on trees in their own gardens; and as not a fifth man of them would have suffered if he had proceeded by jury, they were judged by martial law, Sir Ralph Ellerker being appointed Marshal to execute, Robert Bowes, the King's Attorney to prosecute, them.[171]

Other batches were executed at Durham and York; and then, the breach between the gentleman and the commons being now irreparable, Darcy, Aske, Constable, Thomas Percy and William Stapleton were sent for and committed to the Tower, as were the leaders of the second rising, with the Priors of Guisborough, Bridlington, Jervaulx and Fountains, and a Friar of Knaresborough who had been active in both risings. The commission for taking

[164] *Ib.* xii (1). Nos. 67, 138.

[165] *Ib.* xi. No. 1410; xii (1). No. 98. Norfolk arrived at Doncaster on 1 Feb. 1537.

[166] *Ib.* xii (1). Nos. 163, 169, 201-2, 393. Richmondshire rose on 19 Jan.

[167] *Ib.* viii. No. 155; xi. No. 23.

[168] *Ib.* xii. (1). No. 532.

[169] *Ib.* xii (1). Nos. 201, 369. The attacks were made on 16 Jan.

[170] *Ib.* xii (1). No. 479.

[171] *Ib.* xii (1). Nos. 478, 498.

their indictments in Yorkshire was directed to Norfolk and such of the Council in the North as had taken part in the Pilgrimage of Grace or were most closely connected with the doomed men :—Sir Thomas Tempest, Sir William Eure, Sir Marmaduke Constable the elder, Sir Ralph Ellerker the younger, Sir Ralph Eure, Robert Bowes, William Babthorpe, and John Uvedale, who had returned to his duties as Secretary to the Council ; while the juries which found true bills against them all were chosen from among their nearest kinsmen.[172] A trial at Westminster followed, and all were condemned to death. Darcy suffered on Tower Hill, Percy and the others at Tyburn ; only Constable and Aske were sent north, the one to hang in chains till he died at Hull, the other at York.[173]

The Pilgrimage of Grace was over, and it remained only to take up the work so rudely interrupted and establish the King's Council in the North.

[172] *Ib.* xii (1). Nos. 1172, 1207.

[173] *Wriothesley's Chronicle*, i. p.45.

PART II.

THE KING'S COUNCIL IN THE NORTH PARTS.

CHAPTER I.

The King's Council established in the North Parts.

It must be admitted that there is some excuse for those who have held that the Council in the North was created by Henry VIII in 1537 to keep the northern counties quiet. For it was in this year that its organisation was completed and the extent of its jurisdiction finally determined.

The evolution of the administrative system of the North out of the household economy of the Nevilles and the Percies was now complete. The lands of these two great Houses were now the king's lands, and their Councils had given place to his Council. That Council, no longer connected with a Household nor burdened with the cares of estate management, had become a purely administrative and judicial body. The supreme executive authority north of the Trent, it was also the supreme court of justice, exercising the whole of the Crown's criminal and equitable jurisdiction as well as the justiciary power belonging to the king as lord of scores of honors and baronies; and its authority, no longer confined to the territory of one magnate nor even to a single shire, extended over all the five northern counties, within liberties as without.

In organising the government of the North after the Pilgrimage for Grace, Henry had two aims: 'the quietness and good governance of the people there'; and the 'speedy and indifferent administration of justice to be had between party and party', without which, the late troubles had taught him, there could be no quiet or order in the North. The first steps towards these desirable ends were taken in December 1536 when Henry was making preparations

to frustrate the designs of those persons who desired, either by parliament or else by another rebellion, to compass a change from their present state, and to punish those who had wrung from him a promise to hold a free parliament north of the Trent. It was then arranged that 'the Duke of Norfolk should go thither to lie there as the King's Lieutenant for the administration of justice, and should have a Council joined with him as was appointed to the Duke of Richmond at his being in those parts'.[1]

Accordingly, instructions were drawn up in January[2] for the Duke, who was informed that he was to reside in the North as the King's Lieutenant, and that an honourable Council was to be joined with him by a commission made jointly, whose advice he was to use in all things. Their first duty was to administer the oath delivered to him under the great seal to all the gentlemen and inhabitants, and to receive all bills and complaints of spoils. Then they must search out the grounds of the insurrection and the ringleaders thereof, restore the farmers of the suppressed houses, aid the commissioners in dissolving others, and obtain payment of rents and of all the king's dues. They were also required to recommend to the people the 'grave, discreet, and learned personages' whom his Grace had determined 'to send thither to teach and preach the truth'. Moreover, since one ground of the late rebellion was that certain lords and gentlemen had enclosed commons and taken intolerably excessive fines, the Duke was to receive complaints touching this, inquire who had been most extreme, and moderate between them, so that gentlemen and yeomen 'may live together as they be joined in one body politic' under the king. Further, for common justice in cases within their commission, and that suitosr for the same might be heard without delay, the Duke and his Council should, when they had the country in stay and remained any long time in one place, sit twice a week to

[1] *L. & P.* xi. No. 1410
[2] *Ib.* xii. pt. 1. No 98

determine cases of common justice. Meanwhile, they were to make every effort to secure the ringleaders or captains, if these had committed any offence since the pardon, and if it could be done without danger.

At the same time, Instructions[3] were drawn up for the Council as to the way in which it should carry out its judicial functions. As these became the basis of all future Instructions they are worthy of some attention. In the first place, the Council was to have two commissions, the one to hear and determine treason, murder, felony and such like, the other to hear and determine all causes between party and party by bill, witness, examination, or otherwise by their discretion, in Yorkshire, Northumberland, Cumberland, Westmorland, Durham, York, Kingston-upon-Hull, and Newcastle-upon-Tyne. It was suggested that in the commission of oyer and terminer for criminal causes the Lord Chancellor, the Dukes of Norfolk and of Suffolk, the Lord Privy Seal, the Earl of Sussex, and the Lord Admiral should be named as chief commissioners, and that the Justices of Assize in those parts should be in both commissions with such other discreet persons living in those shires as the king should appoint. Of the commissioners, one was to be President, to whom all bills of complaint might be exhibited, and with him there should always remain a Clerk of the Council with the King's Signet for directing precepts, and a Pursuivant for sending messages. Also one of the commissioners was to be a Master in Chancery and to be present at every Council to take recognisances as the case required; and a place was to be appointed for a prison 'of like sort as the Fleet is', for the punishment of contempts, riots and other offences. The commissioners were directed to keep their sessions four times a year at least, and oftener as occasion arose, the usual place of the sessions to be at York, although they might be held at

[3] Titus F. iii. No. 94, being a mutilated draft of Instructions for Norfolk in 1537, which was used as the basis for Instructions to Durham later in the same year.

other places by discretion. At these sessions five of the commissioners at least, whereof two must be of the quorum, were to be present. If any matter before the commissioners seemed to them doubtful in law, they must certify it at the next term to the king's justices at Westminster and proceed therein according to their opinions; but any weighty or urgent cause, in which they thought well to know the king's pleasure, should be certified to the king and his most honourable Council. Also for the due execution of the Council's decrees and the serving of its precepts, all the king's officers and stewards of great lordships in those shires were directed to reside within their offices, or else make sufficient deputies to keep the country in good order; and all personages of the nobility and worship living in the North parts and not named in the commissions were to receive letters from the king directing them 'to be assistant, obedient and aiding to the said commissioners'.

Henry VIII seldom if ever gave surer proof of his very real statesmanship than in the choice he made of the 'personages of honour, worship, and learning' who were to form the re-established Council in the North. The Duke of Norfolk, of course, was Lieutenant; the Bishop of Durham took his old place as President; and the loyalty of the Earls of Westmorland and Cumberland was rewarded by their inclusion in the Council. There were five knights, Sir Thomas Tempest, Sir William Eure, Sir Marmaduke Constable, Sir Ralph Ellerker and Sir Brian Hastings, who had held Hatfield Chase for the king. To the three common lawyers, Fairfax, Bowes and Babthorpe, were added three civilians, Drs. Magnus, Thirleby and Curwen; and John Uvedale remained Secretary.[4] No fitter agents of the

[4] *L. & P.* xii. pt. 2. No. 102 (2). This is calendared among the papers of June 1537, but on comparison with the signatures to a letter from Norfolk and his Council, 9 March 1537, (*ib.* xii. pt. 1. No. 615) it is evident that it is a list of Norfolk's Council; whereas the next document (3) is a draft list of the Council to assist Durham as Lord President. It may be noted

royal will could well have been found than the quondam leaders of the Northern rising. Their inclusion in the commission in January naturally seemed to the gentlemen a sure proof that the king's pardon extended to offices as well as to life and lands. At the same time the commission laid on them the duty of crushing the second rising and confirmed the commons in their belief that they had been betrayed. The part they had to play in the indictment, trial, and execution of their kinsmen and friends, and of the monks whose cause they had professed to defend, completed their isolation and made them perfect tools for their royal master. The government of the North could safely be entrusted to them, since there was none to whom they might look for help if they offended the king.

Norfolk and the re-established Council were so successful in restoring order that by the beginning of July, the Duke could beg Cromwell to 'believe not, though the best were to have a Lieutenant here, but that without any, and with a good Council and a good President, a good minister of justice and so using himself that men may be affrayed of him, this country is now in that sort, that none of the realm shall be better governed than this'.[5] It is true that Norfolk was anxious to return to the South, and that he was aware that there was really no one so fit to be the King's Lieutenant in the North as himself, familiar as he was with the country and the people, yet aloof from the local feuds and interests. Still, his report was true. So in the autumn he was recalled,[6] and the Bishop of Durham, in spite of his protests that he was poor, old, and hated,[7] was made

that Westmorland and Bowes were sworn of the King's Council in the North before 14 Jan. 1537 (*ib.* No. 86); but it is probable that Babthorpe was not admitted till he had given proof of loyalty by serving on the commission before which Darcy, Constable, Aske, Percy and the rest were indicted in April, just as Chaloner was not admitted till after 12 June 1537, when Norfolk recommended his inclusion (*ib.* xii. pt. 2. No. 100).

[5] *State Papers*, v. No. 322.

[6] He held his last court of oyer and terminer at Newcastle in September (*L. & P.* xii. pt. 2. No. 695).

[7] *Ib.* No. 651.

Lord President. His place in the Council was taken by Robert Holgate, Master of the Order of Sempringham and Prior of Watton, who had recently been elected Bishop of Llandaff; and Lord Dacre of Gilsland replaced Sir Brian Hastings, as Robert Chaloner and Richard Bellasys did Drs. Thirleby and Curwen.[8]

In spite of the difference between Durham's title and Norfolk's, there was none in their powers; for besides the commissions for criminal and common causes which Norfolk had had, Durham on resuming the government of the North sought and obtained for himself a commission for levying men in case of need, though it was to remain with him only as a sheet anchor.[9] Yet the difference was not unimportant, for it meant that the government of the North was no longer in the hands of a great official assisted by a Council, but in the hands of the Council itself. We have only to imagine India governed by a Council instead of by a Viceroy in Council to realise the very real importance of the change which made the chief commissioner, not the King's Lieutenant in the North parts, but the Lord President of the Council in the North.

Nor is the addition of 'Lord' to Durham's title unimportant. The Councils through which Henry VIII had tried and failed to govern the North from 1525 to 1537 had been hampered by their enforced dependence on the Council attendant on the King, and by their consequent lack of initiative outside their judicial duties. Now Henry decided to make the Council the supreme executive body north of the Trent, subordinate to his own Council, of course, but with a freedom of initiative hitherto enjoyed by the King's Lieutenant but not by the King's Council. The change was therefore fittingly marked by the addition to the President's title and by the engraving of a special Signet for the use of the Council, differing from all the other Signets of the King in having on either side of the

[8] *Ib.* pt. 1. No. 795 (30); pt. 2. No. 102(3).

[9] *State Papers*, v. No. 336; *L. & P.* xii. pt. 2. No. 1016.

royal arms a hand with a sword upright in it.[10] It is also probable that the change in the Council's position was further marked by the imposition on the members of an oath of obedience and faithful service. It was not till 1599 that the Lord President was directed by the Instructions to administer such an oath to the Councillors,[11] but there is evidence that it was required from the legal members at least at a much earlier date;[12] and it is far from unlikely that Henry VIII required such an oath from his Councillors in 1537, deeply involved as most of them had been in the Pilgrimage of Grace.

Tunstall did not long remain in the North, and in June 1538 Robert Holgate, bishop of Llandaff, took his place as Lord President of the Council in the North. The Instructions[13] given to him are of the greatest importance for the history of the Council in the North, as in them we have

[10] *Ib.* The only impressions of this Signet that I have seen are on three official documents emanating from the Council which are among the Hull records. The earliest is a document dated 31 August 1586, and corresponds with Tunstall's description. The royal arms, with a hand on either side holding an upright sword, are surmounted by a crown, but the motto round them is wanting and the whole device is surrounded by a band bearing the legend, 'Dieu et mon droit'. The next is on a document of 1 Car. I, but was made by James I's seal. The arms are those of England, Scotland and Ireland surmounted by a crown, the royal motto is wanting, and the legend is, 'Jacobus . . .', the rest being illegible. The third is on a document of 1640 and was made by a seal similar to James's, but the legend is illegible. James's seal was made of silver by Charles Wood, whose bill, presented 30 March 1606, amounted to £8 12s. 1d. (Addit. MSS. 18,764, *f.* 113).

[11] Instructions to Lord Burghley, Aug. 1599; Titus F. iii. 130; S. P. Dom. Jac. I. ii. No. 74, Art. 51.

[12] In 1579 Huntingdon was instructed to receive Humphrey Bridges 'giving him the oath therein accustomed'; Egerton MSS. 2790 F. 41. The oath of supremacy was not required of the Councillors till December 1628; Pat. Car. I. p. 3. m. 1.

[13] *L. & P.* xiii. pt. 1. No. 1269. It is clear that the basis of these Instructions was the Instructions given to Tunstall in October 1537, with certain modifications which experience had shown to be necessary. In the Instructions given to Holgate as Archbishop of York in 1545, these modifications no longer appear as separate clauses.

the first clear and detailed account of the organisation and duties of the Council. As now constituted, the Council in the North consisted of a Lord President, Councillors, and a Secretary. That the Lord President should have exceptional powers was only natural, especially in the circumstances of the re-establishment of the Council in 1537. He was the King's representative, so the same etiquette must be observed towards him as towards the King, kneeling only excepted. His precepts and commands must be obeyed and executed as the King's, and the Secretary, who was also Clerk of the Signet, must seal no writing without his express warrant or that of two of the Council by his consent. During Tunstall's last Presidency, as it seems, the Lord President was authorised, in case of illness or other necessary absence, to appoint a Vice-president, whose powers were — but only for the time of the President's absence — the same as his own.

The President was required to summon the Council for four general sessions in the year for the administration of justice, each lasting for a month, at York, Newcastle, Hull and Durham respectively; but he might summon any members of the Council to meet him at any other time or place that he thought fit, and he could give directions to those who were absent from any meeting to execute the decisions taken at it. Without the President, or the Vice-president, however, no meeting of the Council could be held;[14] and in the meeting, where the decision rested with a bare majority of the members present, he had an absolute veto.

The Councillors were chosen from among those of the northern nobility and gentry whose official position or local influence made them necessary or desirable members of a body entrusted with the control of the whole government north of the Trent, so much trace of the Council's origin being preserved that down to the end of the century

[14] Commissions to Tunstall in 1530 (Privy Seals, Series II. No. 630) and to Holgate in 1540 (Pat. 31 H. VIII p. 6. m. 13).

nearly every member had some office connected with the administration of the Crown lands beyond Trent. To these were added one or two civilians and at least four common lawyers, who, with the President, formed a quorum of whom at least two, one being the President, must be present at every meeting. In 1540 the Justices of Assize were added to the quorum,[15] but until Elizabeth's reign the Archbishop of York and the Bishop of Durham were the only ecclesiastics included in the commission as a matter of course.

At first all the members had been required to attend each of the four general sessions;[16] but this rule could not be strictly observed by the Border officials when these formed part of the Council, and it had already been relaxed.[17] Now it was laid down that only the common lawyers and the Secretary, who were bound to continual attendance on the Lord President, were required to attend every general session; the others were made free to attend or not as they pleased, unless specially summoned. An exception must, however, be noted in the case of the civil lawyers, who although not bound to continual attendance, were still bound to attend every general session, in consideration whereof they received a fee of £50 each.[18] The councillors bound to continual attendance also received fees, at first varying from £20 to 100 marks, but soon fixed at £50 for an esquire and 100 marks for a knight;[19] the Secretary received a salary of £20, which was raised in 1550 to 50 marks.[20] In addition, these councillors received board and lodging

[15] *Ib.*

[16] Instr. 1538.

[17] Instr. 1545, Art. 30. This article is noted as an amendment, and was probably added in 1539. Certainly, the proposal made so late as June 1537 that all members should be paid indicates that all were expected to attend (*ib.* xii. pt. 2. No. 102 (3).

[18] Instr. 1538, Art. 9. Afterwards reduced to 20 marks; Instr. 1561.

[19] Gargrave to Shrewsbury, 17 March 1548/9; Lodge, *Illustrations of British History* i. p. 156.

[20] Instr. 1550, Art. 13.

for themselves and, according to their rank, four or three servants in the Lord President's house, where also the councillors not bound to continual attendance received entertainment when waiting on the Lord President. So, too, by northern custom did suitors and others resorting to the Council on official business, the cost being defrayed out of the Lord President's salary of £1,000 a year. [21]

Down to the time of Holgate's appointment as Lord President there had been no need to assign the King's Lieutenant and his Council an official residence. Northumberland had his own castle of Leconfield; Gloucester had Middleham, Sheriffhutton, and Sandal; Surrey, as Steward of Sheriffhutton, used that castle while he lived in Yorkshire; the Archbishop of York had Cawood; the Duke of Richmond had Sheriffhutton; and Tunstall seems to have used either that castle or the Dean's house at York. Llandaff, however, had no suitable residence near York, and the Dean's house, besides having no garden or open air, could not be used permanently by the Lord President. So in November 1538 the Council asked the king to give them the Black Friars' house called 'Toftis' for an official residence in York, with the Austin Friars at Newcastle.[22] The request was approved, and the Austin Friars was at once reserved for the Council's use;[24] but at York the possibility of a conflict of jurisdictions made it undesirable that the Lord President and Council should be housed permanently within the city boundaries, so the Abbot's house of St. Mary's Abbey outside Bootham Bar, in the king's hands through the dissolution of the greater monasteries, was substituted for the Black Friars' house.[25]

[21] Instr. 1538. It is to be noted that if the Lord President was Archbishop of York, as he was in 1545, 1564 and 1595, he received only 1,000 marks (Titus F. iii. 158) on the ground that as he lived so near York as Cawood or Bishopsthorpe he did not need the same allowance as one whose residence was farther away.

[22] *L. & P.* xiii. pt 2. No. 768.

[24] Welford, *History of Newcastle*, ii. p. 167-8.

[25] *L. & P.* xiii. pt. 2. No.

Both houses came to be known as the King's Manor; but the Council so seldom visited Newcastle that after some years the Manor there was used as a store-house, and by 1595 was very much dilapidated.[26] The Manor at York, on the contrary, was destined to have a long and interesting history which has been admirably summarized by the late Mr. Davies in a delightfully illustrated pamphlet.[27]

In the circumstances it was inevitable that the Lord President, the learned members, and the Secretary, with such other Councillors as happened to live near the Lord President's house, should form a sort of executive committee of the Council. The result was that very few of the other councillors attended even the general sessions unless specially summoned; and as a matter of fact, their attendance seems to have been restricted as a rule to accompanying the Lord President on the opening day when the commission was read. The consequence was that the Council's judicial functions received more and more attention, while the administrative side of its work receded into the background.

During Henry VIII's reign this tendency was not very noticeable. The Council had been established in the North parts because the king was 'much desirous of the quietness and good governance of the people there', and although the 'speedy and indifferent administration of justice to be had between party and party' was a necessary part of good governance, it was only a means to an end, not an end in itself.[28] Therefore, although Holgate's Instructions in 1538 contain directions as to how the Council is to proceed in the administration of justice, and although the fees which might be charged are so regulated as to place justice within the reach of the poorest, it is abundantly clear that 'governance' is the king's main concern. He is careful to direct the Lord President and the Council to

[26] Welford, *op. cit.* iii. p. 97.

[27] *'The King's Manor House at York'.*

[28] Instr. 1538.

'make diligent inquisition who hath taken in and inclosed any commons called intakes, who be extreme in taking gressoms and overing of rents, and to call the parties that have so used themselves evil therein before them and .... they shall take such order for the redress of the enormities used in the same as the poor people be not oppressed but that they may live after their sorts and qualities'; but he is even more concerned that they should 'devise and study all the ways and means possible how to bridle the naughty affections' of the inhabitants of Tynedale and Redesdale, put down maintenance and livery, and urge the people 'to conform themselves in all things to the observation of such laws, ordinances, and determinations as be made, passed and agreed upon by his grace's parliament and clergy. And specially the laws touching the abolishing of the usurped and pretended power of the bishops of Rome whose abuses they shall so beat into their heads by continual inculcation as they may smell and have perfect knowledge of the same and perceive that they declare it with their hearts and not with their tongues only, for a form; And likewise they shall declare the order and determination taken and agreed for the abrogation of such vain holidays as, being appointed only by the Bishop of Rome to make the world blind and to persuade the same that they might also make saints at their pleasure, do give occasion by idleness of the increase of many vices and inconveniences; which two points his Majesty doth most heartily require and straitly command the said President and Council to set forth with all dexterity and to punish extremely for example all contemptuous offenders in the same as His Majesty doubteth not but they will'. Good governance, the maintenance of order, and the execution of the king's policy, religious, social, and economic, these were what Henry VIII required of his Council established in the North parts.

As the supreme executive authority north of the Trent, the Council was for long the only medium of communication

between the Government and the people there, the agent through which the policy of the Privy Council was carried out and its orders enforced. Through it all royal proclamations were made,[29] and all orders from the Privy Council reached the sheriffs and justices.[30] To it were addressed all demands for purveyance,[31] all directions for the raising of loans or benevolences,[32] even commissions for collecting subsidies;[33] to it were directed all orders concerning the export of corn and the regulation of trade,[34] and to it the Privy Council sent directions for the apprehension and examination of suspected criminals or 'wanted' men.[35]

While it was neither possible nor desirable that the Council should take into its hands the actual work of local administration, which was still carried on by the governing bodies of corporate towns and by the Justices of the Peace, yet on the Council was laid the duty of seeing that those entrusted by law and custom with the work of local government should punctually perform the duties laid upon them, particularly the duties of keeping the peace and enforcing the penal statutes. Thus we find it from time to time admonishing the Justices of the Peace in York and the Ainsty and the sheriffs to enforce the peace and enquire after and punish all breaches of the same, and especially to look after 'servants, apprentices, labourers, and all other of that sort', to keep a vigilant eye on soldiers returned from the war, and to enforce the statutes against vagabonds

[29] E.g. Proclamation of peace with France, July 1546 (Y. H. B. xviii. f. 45b); of Henry VIII's death and Edward VI's accession (Tanner MSS. 90. 39. f. 143; Border Papers, vi. No. 131); of Mary's accession (Y. H. B. xxi. f. 4) and of Elizabeth's (ib. xxii. f. 140b).

[30] E.g. for taking musters (Y. H. B. xvii. ff. 4b, 58, 59); for guarding against a French invasion (1545) (ib. xviii, f. 23b ff.); for announcing the failure of Wyatt's rebellion (ib. xxi. f. 31b).

[31] *L. & P.* xvii. No. 1040 (1542); *ib.* xix. pt. 1. No. 189 (March, 1544).

[32] E. g. Benevolence in 1541 (*Hamilton Papers*, i. No. 81), Contribution in 1546 (*ib.* xxi. pt. 2. Nos. 134, 135).

[33] S. P. Dom. Add. Mary, viii. No. 98 (May, 1558).

[34] Y. H. B. xx. ff. 27, 31-3.

[35] *L. & P.* xx. pt. 2. No. 212; *A. P. C.* iv. pp. 156, 223.

and the proclamations against excessive prices of grains and victuals.[36]

Closely connected with this side of the Council's work was the work done by it as a Court of Requests. At every sitting, we are told, 'very many matters between party and party were ordered and ended',[37] 'pleas of debt, trespass, actions upon the case, etc., and also suits in equity'; 'many also were committed to ward for making of frays, breaking of decrees, and for lack of appearance according to the order of the court, and some for extortion'. Most of the suits were those of poor men, for 'the institution of this jurisdiction was especially for the relief of the poor against the oppression of great men, and great men were seldom plaintiffs in this place unless it were for their rents'.[38] Of course, the facilities offered by the Court were sometimes abused 'by such litigious persons as cannot be in rest'; and one of Tunstall's first requests was for the return of the Books of Decrees ordered 'as well by us in our last commission as by my Lord of Richmond in his time', which books had been delivered by him to Cromwell at the King's command, but were now needed at York as the matters were like to be renewed.[39] Others, again, were wont to sue out of the Chancery writs of *sub poena* against persons living, like themselves, within the limits of the Council's commission, only for molestation, because it was better for a party dwelling beyond the Trent to accept wrong rather than sustain the costs of appealing. Here, however, the Council interfered, and taking matters into its own hands simply stayed such writs.[40]

An institution whereby the king's 'true subjects, poor

[36] Y. H. B. xviii. f. 34; xx. ff. 25b, 27b.

[37] Holgate to Cromwell, 20 Aug. 1538; *State Papers*, v. No. 350.

[38] *Ib.* v. No. 328; Egerton MSS. 2578. f. 57b ff., being '*Analecta Eboracensia*', by Sir. Thomas Widdrington, who writes of the Council at this time: 'They exercised jurisdiction for establishing of possessions of lands, punishment of extortions and other misdemeanours'.

[39] *L. & P* xii. pt. 2. No. 336.

[40] *Ib.* xviii. pt. 2. No. 34.

and rich, without tract of time, or any great charges or expenses' could 'have undelayed justice daily administered to them', was sure to win the favour of the people in course of time. As a matter of fact, less than three years after the re-organisation of the Council, its establishment was taken to be so good and gracious a favour to the people that it was cited among other things in a subsidy statute of 1540 as a reason for granting to the king two subsidies and four fifteenths.[41]

Moreover, the Council had been specially instructed to make diligent inquisition who had enclosed any intakes, who had been extreme in taking gressoms and raising rents, and to take order for the redress of enormities in such things, thereby relieving the poor tenants of the odium of complaint. So it is more than likely that if we now had the earliest books of decrees in our hands we should discover that the Council was enforcing the agreement as to tenant-right and gressoms made by the landlords with the commons at Pontefract as well as the laws against enclosures and intakes. In that case, it may be assumed that it was chiefly the removal of these, the greatest of the commons' grievances, that kept the North quiet during Henry VIII's last years and even during the agrarian risings of his son's reign.

Yet it must be admitted that other causes contributed to this result. The moderate, even conservative, religious policy followed by Henry VIII after Cromwell's fall counted for something; but a great rise in the price of wool between 1540 and 1550[42] counted for more, since it brought much German and American silver into the North to relieve the economic pressure caused by the earlier rise in prices and rents. At the same time the outbreak of war with Scotland drew off many ruined yeomen, discarded retainers, and serving-men, to say nothing of many an idle fellow, drunkard, seditious quarreller, and privy picker, and such as had some

[41] Preamble to Subsidy Statute of 1540, 32 Hen. VIII c. 50.

[42] Rogers, *Hist. of Agri. & Prices*, iv. pp. 305-6.

skill in stealing a goose,[43] those 'cankers of a calm world and a long peace' who were ever foremost when rioting was on foot.

The net result was that the last years of Henry VIII's reign were marked by the steady growth of order and the power of the Crown north of the Trent. The Earl of Northumberland's death in June, 1537, gave the king all the Percy lands. The dissolution of the greater monasteries swept away most of the smaller liberties. One by one the remaining franchises passed into the king's hands. Beverley was the first, being surrendered by Archbishop Lee just before his death in September 1544.[44] This event Henry made the opportunity for acquiring the other liberties of the See of York. The Earl of Shrewsbury, the Lieutenant-general in the North,[45] Tunstall and Sir Ralph Sadler, the chief members of his Council, when notifying Queen Catherine and the Council of Lee's death suggested that Holgate should be made Archbishop of York as by so doing the king would promote an honest and painstaking man and save the Lord President's salary; for, as they pointed out, 'the Archbishopric with the small things he enjoys in this county (i.e. Northumberland) would maintain the office of President.[46] This approved itself to Henry, and when he returned from France he made Holgate Archbishop of York and renewed his commission as Lord President of the Council in the North at a salary of £300 a year instead of £1,000.[47] The new Archbishop, however, was not allowed to enjoy 'the small things in his county'; for a week after he took oath he surrendered to the king all the franchises of the see and many manors, receiving in exchange monastic revenues and lands which gave him

[43] Rich, *Dialogue between Mercury and an English Soldier*, written in 1574, quoted by Firth in *Cromwell's Army*, p. 3. n. 3.

[44] Drake, p. 544.

[45] Since 10 Jan. 1544 (*L. & P.* xix. pt. 1. No. 657).

[46] 16 Sept. 1544 (*ib.* xix. pt. 2. No. 239).

[47] Jan. 1545 (*ib.* xx. pt. 1. No. 116).

no justiciary rights.[48] Thus Henry got full possession of the liberties of Hexham, of which Robert Bowes, now Warden of the Middle March,[49] was made Steward,[50] and Ripon, which was annexed to the Duchy of Lancaster.[51] In the following year (1546) Redesdale was acquired from Lord Tailboys by exchange,[52] so Durham remained the only liberty north of the Trent that was not united with the Crown, and it is very probable that Henry was only waiting for Tunstall's death to secure it too. The king, however, died before the bishop, and although the desired union was actually made at the close of Edward VI's reign, it lasted for a few months only, as Mary restored it to the Bishop.

Successful as was the rule of the re-established Council in the North, one failure must be recorded. Henry VIII had set his heart on bringing the Marches under his own control; and as soon as the Percy lands came into his possession he took into his own hands the Wardenship of the Marches. Refusing to 'be bound to accept the services of none but lords',[53] he appointed as his lieutenants men of moderate fortune like Sir William Eure and Sir Thomas Wharton,[54] who were to be subject to the control of the Council in the North as in 1525.[55] To it they looked for orders and through it alone they had communication with the government.[56] That all commissions for taking musters and for levying troops for the Border[57] should be addressed to the Council was in the circumstances of its re-establishment only natural; but its control of the Marches also made it a channel

[48] *Ib.* Nos. 115, 152, 465 (39).
[49] 19 March 1545 (*ib.* No. 465 (53)).
[50] 19 March 1545 (*ib.* No. 154).
[51] 37 Hen. VIII c. 16.
[52] Hodgson, *Hist. of Northumberland*, Part ii. vol. 1. p. 66.
[53] *L. & P.* xii. pt. 1. No. 1118.
[54] *Ib.* No. 225; *ib.* pt. 2. No. 154.
[55] *Ib.* xiii. pt. 1. No. 1269.
[56] E. g. *ib.* xiii. pt. 2. No. 63; xiv. pt. 2. No. 203; xv. Nos. 57, 319, 361
[57] *Ib.* xxi. No. 630; *Hamilton Papers*, i. No. 124.

of communication with Scotland. Not only were the negotiations with disaffected Scottish nobles conducted through it, but on occasion it also corresponded directly with James V; and when commissioners were required to meet the Scots for the redress of Border grievances, some members of the Council were naturally included.[58]

Nevertheless, the Council's connection with the government of the Marches was severed almost as soon as it was formed. The Duke of Norfolk had warned Henry that 'to keep the wild people of all three Marches in order will require men of good estimation and nobility',[59] and as soon as relations with Scotland became strained to breaking-point, he was proved to be right.[60] Therefore, from the time that Norfolk himself was sent north as Lieutenant-general in January 1541, the control of the Marches was taken from the Council[61] and given in time of war to the Lieutenants sent to command the army against Scotland, and in time of peace to the Wardens who were henceforth appointed with full powers.[62] These of course communicated directly with the Privy Council on all March affairs;[63] and the Council in the North retained only so much of its original administrative authority in the March shires that

[58] *L. & P.* xiv. pt. 1. Nos. 146, 232.

[59] *Ib.* xii. pt. 1. No. 594.

[60] *Ib.* xvi. No. 496.

[61] In the Instructions of June 1538 the Council is given directions to reduce Tynedale and Redesdale to order (*ib.* xiii. No. 1269). This is omitted from the Instructions of 1545 (*State Papers*, v. No. 402).

[62] Rutland, Lord Warden, Aug. 1542 (*L. & P.* xvii. No. 577); Suffolk, who replaced him, Sept. 1542 (*ib.* No. 778), and Hertford, who became Warden 15 Oct. 1542 (*ib* No. 987). Meanwhile, the earlier deputies were being advanced in wealth and rank, Wharton and Eure being created barons in 1542.

[63] *Ib.* xvi. No. 832, Wharton to Henry VIII, May 1541; *ib.* No. 434, Privy Council to Eure. It should be noted that the Council in the North whose correspondence is included in the Hamilton Papers, is not the King's Council in the North, but the Council assigned to every Lieutenant-general; e. g. in 1545 (*ib.* xviii. pt. 1. No. 105). Its membership was almost wholly different from that of the Council at York.

it was through the Lord President that all orders relating to the civil administration reached the Wardens for transmission to the justices of the peace.[64]

Apart from this one failure, the rule of the Council in the North was singularly successful; and at the end of life Henry VIII could count at least one task well done. The work begun by Henry IV when he made his son and his brother-in-law the Justices of Peace in the North parts had been finished. One by one the franchises and liberties north of the Trent had been united with the Crown; the lands of the Nevilles and the Percies had become Crown lands; the justiciary rights they had once enjoyed had been merged in those of the Crown; and their Councils had given place to the King's Council in the North parts. The problem of the North had been solved at last.

[64] *Corporation of Kendal MSS.* p. 301.

CHAPTER II.

The Presidency of Francis, Earl of Shrewsbury.

Henry VIII owed the strength of his position to the skill with which he appealed to the weaknesses of a people whose dominant characteristic was a passion for material prosperity. In appealing to material motives, however, he let loose a revolution in which greed and ambition were the dominant factors. He himself was able to control it; but when he was gone, there was no check, and something like chaos followed his death. His son's minority gave the government to the Lords of the Council, and these, 'new men' though they were, being not less self-seeking than the 'old nobility' whom they had supplanted, at once began intriguing both in and out of the Council for supreme power.

In this contest, the control of the North was of the first importance. On the one hand, its poverty, its Catholicism, and its turbulence made it an ideal base of operations for those schemers who did not shrink from allying with disaffection if only they might thereby win their way to supremacy. On the other hand, the garrisons in the Border strongholds were the only troops in the land that were always under arms, ready to be used for or against the government at the bidding of their own commander [1]. The Wardenship of the Marches, therefore, and in hardly less measure the Presidency of the Council in the North,

[1] In August 1547 the garrisons in the East March and Berwick were: in Wark, 200; Conehill, 50; Norham, 150; Etal and Ford, 100; Fenton, 50; total, 722, besides 240 always at Berwick in addition to the garrison; S. P. Dom. Add. Ed. VI. i. No. 28 (1). In 1557 Northumberland told the Council that the garrisons on the Marches used to be 2500 strong; Ibid. Mary. viii. No. 41.

were marks for much of the intrigue that played so great a part in the domestic history of England in the second half of the sixteenth century.

Seldom as these intrigues began in the North itself, they yet determined the course of the development of the Council there in such fashion that it is impossible to trace that development without giving some attention to the political history of the time. Through the rivalry of the Earls of Warwick and Shrewsbury the Council lost all its military responsibilities and many of its administrative duties but gained new judicial powers; through the struggle for supremacy between the old nobility, led by the Duke of Norfolk, and the new men, led by Warwick's son, the Earl of Leicester, and Sir William Cecil, came a revival of its administrative functions; through the rivalry of the Earl of Essex and Sir Robert Cecil for the favour of Elizabeth and her successor, these were again lost, leaving the Council simply a law-court.

Just at first Henry VIII's death left the North unaffected. When the Duke of Somerset became Protector of the Realm and Governor of the King's Person, he had been Lieutenant-general north of the Trent for nearly three years and his influence was paramount there. The officers of the army against the Scots had been chosen by him and the Wardens of the Marches were his friends, as were the Captains of the chief northern strongholds. The Lord President of the Council owed his elevation to the Archbishopric of York to his influence, and when the Commission and Instructions had been renewed in 1545 several of his protegés, who also held offices in the administration of the crown lands and revenues beyond the Trent, were admitted to the Council in the North.[2] Having the government of the North thus practically in his own hands, the Protector did not hesitate to strengthen the Council in every way that it might the

[2] E.g. Francis, Earl of Shrewsbury, who in 1548, was made Justice of the Forests beyond Trent (Pat. 2. Ed. VI. p. 2), Thomas Gargrave, a servant of Shrewsbury's (p. 184), and Richard Norton, Constable of Norham.

better carry out both the more decidedly Protestant policy embodied in the Chantries Act and the Act of Uniformity, and his own agrarian policy against enclosures and rack-renting ; and it was in his time that the Mayor and Twenty-four of York were first explicitly ordered to obey all commissions directed to them from the Council in the North, their charters notwithstanding.[3]

Somerset's downfall in October 1549 had far-reaching effect on the Council, membership, instructions, and authority alike being affected. Fearing lest the fallen Protector should call his friends in the North to his aid, the leaders of the cabal against him made it their first care to secure control of the North, and four days after his arrest Sir Robert Cotton was sent to York to consider and survey the matters of the North and to take order for reforming any abuses or neglect by the officers and soldiers there.[4] It was not, however, till the beginning of 1550 that the inevitable redistribution of offices took place. The coup d'état of the autumn had been the work of a coalition of Catholics and advanced Reformers who had momentarily forgotten distinctions of creed in their common envy of the Protector and hatred of his agrarian policy, and in the division of spoils the government of the North fell to the Catholics. A small insurrection raised at Seamer near Scarborough in August 1549, which had easily been quelled by the Council in the North by the offer of a free pardon and the execution of the leaders,[5] was made a pretext for removing Archbishop Holgate from the Presidency; and in February 1550 Francis, Earl of Shrewsbury, the leader of the English Catholics, became Lord President of the Council in the North in his room.[6]

The appointment was in every way a suitable one, Shrewsbury, who was already Justice of the Forests beyond

[3] Y. H. B. xix. f. 36-40, 50b, 60, 69b, 70.

[4] *A.P.C.* ii. p. 346 ; S. P. Dom. Add. Ed. VI. iii. No. 55.

[5] Stowe, *Annals*, p. 597.

[6] Harl. 1088 ; *A.P.C.* ii. p. 396.

the Trent,[7] had been a member of the Council in the North since April 1545,[8] and if he had taken no great share in the administration of justice, he had been active as Lord Lieutenant of Yorkshire during the Scottish campaign of 1547. Moreover, as a Catholic he was entirely acceptable as ruler of the Catholic North and his relations with the Catholic majority in the Council were likely to be good.

In the Council itself very few changes were made. Sir Robert Bowes, Sir William Babthorpe and Robert Chaloner had been members since 1530, Lord Dacre since 1537; Thomas Wharton, made a baron for his victory over the Scots at Solway Moss (1542), had been admitted in March 1541, [9] Sir Henry Savile in February 1542, on being made Steward of Pontefract and Wakefield;[10] Sir Thomas Gargrave, Steward of the Lordship and Soke of Doncaster,[11] and Richard Norton, Constable of Norham,[12] in April 1545; Sir Leonard Beckwith, Receiver for the Court of Augmentations in Yorkshire, in January 1546;[13] the Earl of Cumberland, the Lord Clifford of the Pilgrimage of Grace, in December 1546;[14] Robert Mennell, serjeant-at-law, Seneschal of Durham,[15] John Rokeby, Chancellor of York and the most learned Civilian in England,[16] and Sir Nicholas Fairfax of Walton, Steward of St. Mary's Abbey lands,[17] in February 1548.[18] To these, with the Justices of Assize for the time being, were now added Tunstall, Bishop of Durham; Henry, Earl of Westmorland, Steward of Picker-

[7] 23 May 1548; Pat. 2. Ed. VI. p. 2.

[8] Harl. 4990. f. 136.

[9] *G.E.C.*; Harl. 1088. f. 5b.

[10] Ibid; Hunter, *South Yorkshire*, ii. p. 301.

[11] *Records of Doncaster*, ii. p. 220; Harl. 4990. f. 138.

[12] Ibid; *Hamilton Papers*, ii. p. 578.

[13] *L. & P.* xi. No. 750; xxi. pt. 1. No. 148 (91-2).

[14] Marginal note to Harl. 4990. f. 138, evidently written by a member of the Council in the North.

[15] *For. Cal. 1559-1560*, No. 850.

[16] See p. 252.

[17] Cartwright, *Chapters in the History of Yorkshire*, p. 19.

[18] Harl. 1088. f. 10.

ing Lythe,[19] who had succeeded his father in April 1549; John, Lord Conyers, Bailiff, Steward and Constable of Richmond and Middleham, and Keeper of the Forest of Galtres;[20] Sir George Conyers, High Steward of Allerton;[21] Sir Anthony Neville;[22] Anthony Bellasis, Doctor of Laws; and Thomas Eynns, formerly Secretary to the Duke of Richmond,[23]

[19] *Dict. Nat. Biog.*

[20] *A.P.C.* ii. p. 75.

[21] Ingledew, *History of Northallerton*, p. 103.

[22] A captain in the army against Scotland in 1548; *Cal. of Sc. P.* i. No. 318.

[23] *L. & P.* xi. No. 164 (2). Hennes, Enns, Ennis, Eynns, Eynnes, Eynnis are all found in the documents as variants of the Secretary's name; in the Calendars it is sometimes transcribed as Ems and even as Kymes. He himself always spelt it Eynns, the form used here.

It is probable that Eynns had been acting as deputy-secretary to the Council in the North for some time. We know that in Aug. 1542 the Lord President was authorised to nominate a deputy-secretary for the time that Uvedale was with the army on the Border as Treasurer, he making fair provision for his deputy (*Hamilton Pa.* i. p. 117). Now, although Uvedale never had more than £20 as Secretary (*L. & P.* xiii. No. 1269; xv. pt. 1. No. 116), Eynns and all his successors had £33. 6s. 8d., i. e. £20 plus 20 marks; may not the 20 marks represent his fee as deputy, which he was allowed to keep in addition to his fee as Secretary? That he was high enough in Somerset's favour is proved by the grant of an anauity of 40 marks made to him in 1547 (Pat. 1 Ed. VI, p. 3. No. 75).

If Eynns was indeed deputy-secretary, it would explain much that is puzzling in his career. In September 1549 he was released by the Council of State on a recognisance to come up at any time within six months when called upon to give further evidence on the matters on which he had already been examined (*A. P. C.* ii. p. 11). Then, in Feb. 1553 Babthorpe and Beckwith were ordered to send him in safe custody to the Lords of the Council, and to cause all his goods and writings to be stayed in sure keeping until the King's further pleasure should be known (*Ib.* iv. p. 223). Nowhere does it appear why Eynns was thus summoned before the Council; but if he were deputy-secretary, it is not unlikely that it was because irregularities had appeared in the Secretary's office. There is among the Border Papers a letter from Eynns to Cecil in 1561 asking that the fees should be what they were in Henry VIII's time, and enclosing a comparative table of fees past and present which shows the fees of Henry VIII's time much higher than were authorised by the Instructions of 1545 (Border Papers, No. 65; ibid. iv. No. 190). Also it was thought necessary in 1550 to give the

who now replaced Uvedale as Secretary to the Council in the North.[24]

As regards the Instructions, the changes were more important. The parliament that met in November 1549 had been as determined that Somerset's policy in religion should be continued as that his agrarian policy should be reversed. The Instructions to the Council in the North had therefore to be modified. In the main, those now given to Shrewsbury[25] were identical with those given to Holgate in 1545, save that for the first and last time the Lord President was directed to take into his own keeping the Council's Signet. But in the important Articles dealing with religion and enclosures there were changes of great significance. The direction to 'give strait charge and commandment to the people to conform themselves in all things to the observation of such laws, ordinances and determinations as be or shall be made, passed and agreed upon by his Grace's Parliament and Clergy, especially the laws touching the abolishing of the usurped and pretended power of the Bishop of Rome', etc. became a direction to 'give strait charge and commandment to the people to conform themselves in all things to the observance of such laws, ordinances and determinations as be or shall be made, passed, and agreed upon by his Grace's lords of parliament touching religion and the most Godly service set forth in their mother tongue for their comforts, and likewise the laws touching the abolishing' etc., so that the Council in the North was now expressly charged with the enforcing of the Act of Uniformity. Also the Instruction to 'make diligent and effectual inquisition who be extreme in taking of gressoms

Lord President and Council the appointment of the Examiners of Witnesses as well as the supervision of the Clerks (S. P. Dom. Add. Ed. VI. iii. No. 47). Whatever was wrong, Eynns remained Secretary of the Council in the North until his death, 19 April 1578.

[24] Eynns's patent bears date 4 Feb. 4 Ed. VI. p. 5; Uvedale's will was proved 2 March 1550 (Leadam, *Select Cases in Court of Requests*, i. p. 202 n. 7).

[25] S. P. Dom. Add. Ed. VI. iii. No. 47.

and overing of rents, and to call the parties' etc. gave place to an Instruction to 'make diligent inquisition of the wrongful taking in and enclosing of commons and other grounds, and who be extreme therein and in taking and exacting of unreasonable fines and gressoms, and overing or raising of rents, to call the parties' etc. At first sight this Article seems to sanction the continuance of Somerset's social policy in the North ; but reflection shows that the insertion of the words 'wrongful' and 'unreasonable' sufficed to bring the Instructions into line with the laws just enacted by parliament whereby the whole of the Tudor land legislation had been made void by the re-enactment of the Statute of Merton which expressly permitted lords of manors to enclose as much as they liked, provided that 'sufficient' commons were left for their tenants, while provision was made against the disturbance likely to ensue by a statute concerning riotous assemblies which made it treason for forty, felony for twelve, persons to meet to break down enclosures or to enforce a right of way. A new meaning had also been given to the direction to the Council to suppress *confederationes* by a law forbidding workmen to combine for the purpose of raising wages or determining the hours of labour, whereby the raison d'être of the craft-gilds was destroyed.[26]

It was, however, in respect of authority that Somerset's fall was to have the greatest effect on the Council. Neither of the parties to the coalition that brought it about trusted the other, and it is significant that Shrewsbury's appointment to the Presidency of the North was not made until negotiations for peace with France and Scotland had been opened and the disbanding of the army of the Border had begun. Somerset's policy, like Henry VIII's, had been to concentrate all power in the North in the hands of the Council there, making it the supreme executive authority beyond the Trent. But the Earl of Warwick, the leader of the Reformers, had no mind to allow all civil and military power in the North to be concentrated in the hands

[26] 3 & 4 Ed. VI. cc. 5, 15.

of the Catholics, So Shrewsbury, on taking the Presidency, had not only to forego the Lieutenancy, which remained in abeyance despite the troubled state of the country, but also to admit to the Vice-presidency Warwick's friend, Lord Wharton.[27] Then, although his brother-in-law, Lord Dacre of the North, was made Warden of the West March in Wharton's stead,[28] he had to allow Warwick to take for himself the much more important Wardenship of the East and Middle Marches, where Sir Robert Bowes acted as his deputy.[29] Moreover, to counterbalance the Talbot estates in South Yorkshire, Warwick obtained a grant from the Crown of all the Percy lands in that county and in Northumberland, save Alnwick.[30]

It was not to be expected that the coalition which had overthrown Somerset should long survive its success; and when Warwick persuaded the Council of State to adopt a revolutionary policy in religion which offended the many who approved Henry VIII's settlement no less than the few who abhorred it, Shrewsbury quickly came to an understanding with Somerset, who was soon at the head of a powerful faction which had behind it nearly the whole strength of the North. Warwick, however did not wait for his rival to act. Information that Henry Neville, Earl of Westmorland, 'a person of ancient nobility, but of a tainted life and blemished manners',[31] had hatched a plot (July 1550) to seize the King's treasure at Middleham and stir the people to rise against the calling down of the coin, and that the Bishop of Durham, treating it with the contempt it deserved,

[27] Talbot MSS. B. ff. 171, 173. The Vice-presidency was given to Wharton in lieu of his Wardenry; but as a matter of fact, he never took his place as Vice-president, Babthorpe acting instead down to the end of the reign (Harl. 1088).

[28] *Greyfriars' Chronicle*, p 6; cp. *A.P.C.* iii. p. 92.

[29] *Ib.* ii. p. 393; iii. pp. 23, 88, 102, 117.

[30] *Ib.* iii. p. 11.

[31] Strype, *Eccles. Mem.* ii. pt. 2. p 74. As a youth he had plotted his father's death in order that he might pay his gambling debts; *L. & P.* xxi. pt. 2. Nos. 212, 419; *A.P.C.* ii. pp. 458, 487.

had not thought fit to report it to the Council, placed both Westmorland and Tunstall in his power.[32] So the former was sent to keep the Bishopric while the latter was summoned to court.[33] Dorset, with a great company, was sent north as Warden-general of the Marches,[34] Shrewsbury was threatened with the loss of his Presidency, and the Earl of Derby was commanded to renounce to the King his title to the Isle of Man.[35] For a moment Somerset thought to seize Warwick and his supporters in the Council by a coup d'état on St. George's Day, while Shrewsbury and Derby raised the North;[36] but in the end he determined to await the meeting of the parliament which Warwick's financial difficulties would soon force him to summon.

Again Warwick, who was well aware of his danger, struck first. At the beginning of October 1551, Dorset resigned the Wardenship of the Marches to Warwick, now Duke

[32] Strype, *op. cit.* ii. pt. 2. pp. 74-5. On p. 74 Strype gives 1551 as the date, but on p. 21 he gives 1550 and on p. 23 cites de Chambre as authority. for a similar conspiracy in 1548. De Chambre, however, (*Hist. Dunelm*, p. 155) merely says that Rinian (i. e. Ninian) Menvill accused Tunstall, his Chancellor, and the Dean of Durham of concealing a conspiracy in the North towards the end of King Edward's reign, a description that suits 1550 better than 1548. As between 1550 and 1551, the former seems preferable in view of a letter written by Warwick to Cecil on 16 Sept. 1550, in which he describes a visit that he had paid to the Bishop at Ely Place. "Being out of doubt", he writes, "that he (i.e. the Bishop) hath perfytt knowledge for what cause he was sent for [by the Council], I fyll into communication with him and took occasion to saye that he had a good ffrend (*sic*) for M., marvelling motche that when he hadd him at soche advantage by testimony of his owne lettres that he dyd not send him and his letters to the Counsell. Whereunto his answer was so cold as I cold not tell what to mak of Yt, but full of perplexity and feare he seemeth to be, and no doubt but that the matter wyll toche him wonderfully and yelde to the king as good a sort as the B. of Winchester ys lyke to doo, yf the cards be true"; S. P. Dom. Ed. VI. x. No. 31.

[33] *Literary Remains of Edward VI*, p. 303.

[34] *A.P.C.* iii. p. 223.

[35] *For. Cal. 1547-53*, pp. 119-20.

[36] Howell, *State Trials*, 'The Trial of the Duke of Somerset'; S. P. Dom. Ed. VI. xiii. No. 17.

of Northumberland, receiving in compensation the dukedom of Suffolk;[37] Somerset was summoned to court; Edward was told of the St. George's Day plot; and on 16 October Somerset and his friends were sent to the Tower.[38] In the final draft of the charges against him, Somerset stood charged with plotting the imprisonment of Northumberland and his friends, the incitement of the Londoners to revolt, and the raising of rebellion in the North; but when he had been convicted of felony on the second charge, the others were dropped.[39] They served, however, to warn Shrewsbury and his friends of the danger in which they stood; and the lesson was driven home by the imprisonment of the Lord President's own brother-in-law, Lord Dacre, in the Fleet (Nov. 1551) for a feud with the Musgraves,[40] and by the arrest of the Bishop of Durham, who was sent to the Tower on a charge of misprision of treason for concealing his knowledge of Westmorland's foolish plot.[41] The same day, new deputy-wardens in all the Marches took over the control of the Border forces, and Alnwick and Tynemouth were given to Northumberland to garrison with men in his own pay.[42] Discretion therefore seemed the better part of valour, and no attempt was made to anticipate by a rising the meeting of the parliament summoned for January 23. At sunrise on the 22nd, Somerset was beheaded on Tower Hill.

Northumberland was now free to carry out his own policy in Church and State. So far as the North was concerned, he at once set about completing Henry VIII's work by uniting the County Palatine of Durham with the Crown. A bill for depriving Tunstall of the Bishopric passed the Lords,[43] but met with unexpected opposition from the Com-

[37] *A.P.C.* iii. p. 379.
[38] *Lit. Rem.* p. 71.
[39] Howell, *State Trials*, loc. cit.
[40] *A.P.C.* iii. pp. 367, 447.
[41] *Lit. Rem.* p. 378.
[42] Strype, *op. cit.* ii. pt. 2. p. 223.
[43] *Journal of the House of Lords*, i. pp. 416-8.

mons;[44] so Northumberland was forced to seek his ends by other and more arbitrary means. First, however, he had to secure himself against armed resistance in the North. A grant of the Chief Stewardship of the East Riding and of all the king's lordships there and in Holderness and Nottingham[45] gave him more than all the power the Percies had had there; Westmorland, the most influential man in the Bishopric, was won to his interest by being admitted to the Order of the Garter in Somerset's stead.[46] Then in May 1552 commissions were issued appointing certain noblemen in every county to be the King's Lieutenants and Justices to levy men and to do justice on rebels by martial law; Northumberland as Warden-general of the Marches was made Lord Justice and Lord Lieutenant in Northumberland, Cumberland, Newcastle and Berwick; Shrewsbury as Lord President of the Council in the North, in Yorkshire and the city of York; Cumberland as hereditary sheriff in Westmorland; and Westmorland in Durham.[47] Lastly, in June Northumberland himself went north[48] to fill all places of trust there with men of his own choosing, and to win Shrewsbury to his cause by making him keeper for life of all the royal castles in Yorkshire and Nottinghamsire.[49] This done, he left the composing of feuds in the Marches — his ostensible business there — to his new Deputy-warden-general, Lord Wharton,[50] and returned to his place at the Council-table at the end of August, having disbursed during his short visit to the North no less a sum than £10,000.[51] The peace of the North was now assured; and in October Tunstall was tried before a special com-

[44] *Journal of the House of Commons*, i. p. 21.

[45] Strype, *op. cit.* ii. pt. 2. p. 224.

[46] *Machyn's Diary*, p. 17.

[47] Strype, *op. cit.* ii. pt. 2. p. 162.

[48] *A. P. C.* iv. p. 55; *Machyn*, p. 21.

[49] Pat. 6 Ed. VI. p. 8d.

[50] Appointed 31 July 1552; S. P. Dom. Mary IV. No. 14a. He had taken part in Somerset's trial.

[51] Strype, *op. cit.* ii. pt. 2. p. 12.

mission of lay judges, found guilty, deprived of his bishopric, and sent to the Tower,[52] where he remained till released by Mary. Meanwhile, the Bishopric was divided into two dioceses, Durham and Newcastle, and the County Palatine was united with the Crown. There-upon, Northumberland, who had just been given Barnard Castle, was made (April 1553) High Steward of all the lands of the Bishopric,[53] Westmorland finding what compensation he might in a free pardon for all treasons and conspiracies before 28 March 1553, and for all heresies and undue uttering of words against the king and his councillors.[54]

Thus it came to pass that the close of Edward VI's reign saw the government of the North once more divided between a Lieutenant-general in Yorkshire and a Warden-general in the Marches. For the concentration of power on the Borders in Northumberland's hands forced the Council in the North to withdraw from the Border counties. According to the Instructions, the Council ought to hold four general sessions in the year, — one at York, one at Hull, one at Durham, and one at Newcastle, each for the space of one month, though they might at discretion be held

[52] *Ib.* pp. 208-9; *A.P.C.* iv. p. 127; *Machyn*, p. 26.

[53] April, 1553; Strype, *op. cit.* ii. pt. 2. p. 236.

[54] *Ib.* ii. pt. 2. p. 233. Menvil got £100 as a reward for his share in the business (*ib.* pp. 21-2, 75). This man's after career was very characteristic of the time. He joined in proclaiming Lady Jane Grey, Queen, and on Mary's accession fled, apparently to Scotland where he was received by the Queen Dowager, Feb. 1554 (S. P. Dom. Mary, vii. No. 35). In his absence he was in Oct. 1556 indicted in the King's Bench for treason and outlawed (Surtees, *Durham*, iv. p. 47). He apparently remained in Scotland in the service of Mary of Guise till Feb. 1567, when he arrived in Paris, being recommended to the King by the Queen Dowager of Scotland (*For. Cal. 1553-58*, No. 579). Under Elizabeth he returned to England, and was imprisoned by the Earl of Northumberland as Warden of the East March in May, 1559 (*ib. 1558-9*. Nos. 81, 336). He was pardoned, 10 July 1559, and was taken into Lord Robert Dudley's service. In October 1559 he was employed to convey the Bishop of Argyle into Scotland (*ib. 1559-60*, Nos. 81, 336). He died in 1562, and many years later his daughter sought and obtained the reversal of his attainder (Strype, *op. cit.* p. 23).

elsewhere; and between the sessions certain Councillors with the Secretary were bound to attend continually on the Lord President to deal with such cases as called for immediate remedy. Down to Shrewsbury's time these Instructions had as a rule been carefully followed; but after Warwick became Warden of the East and Middle Marches in 1550, the Council ceased to hold sessions outside Yorkshire.[55] As a result, its criminal jurisdiction in the Borders was in effect transferred to the Wardens and the Justices of the Peace; the penal laws therefore remained unexecuted and the blood-feud revived, to the serious hindrance of justice.[56] At the same time the heavy charges incident to travel made it impossible for poor men to lay their complaints and suits before the Council at York, although it was their need that justified its existence,[57] and had it not been that the Northern gentlemen had now learnt to use the Council in their feuds as a means of annoyance to their enemies,[58] it would have had few dealings with the Borders.

In Yorkshire, the position would have been better if the Instruction that certain of the Councillors should be continually attendant on the Lord President and should have sitting in his hall with servants proper to their rank, had been observed. It had been carried out easily enough when the Lord Lieutenant or Lord President was continually resident in the North at some castle within easy reach of York, as Lincoln had been at Sandal, Northumberland at Leconfield, Surrey and Richmond at Sheriffhutton, and the Archbishops of York at Cawood or Bishopsthorpe, so that it was easy for suitors to resort to them out of term. Shrewsbury, however, absorbed in the great gamble for power, was frequently absent from the North for months at a time, and during these absences he was accustomed

[55] Harl. 1088.

[56] S. P. Dom. Add. Ed. VI. iv. No. 32.

[57] S. P. Dom. Add. Eliz. xiv. No. 33.

[58] So Dacre told Shrewsbury in July 1557; Strype, *op. cit.* iii. pt. 2. p. 69.

to leave his Vice-president to live privately at his own house alone without any allowance for the diets of the Secretary and other Councillors bound to continual attendance, without whom no business could be done. Even when he was in the North, the Lord President lived chiefly at his house at Sheffield, the most southerly part of the Commission, so that speedy resort to him was in most cases out of the question. The result was 'a defacement of the said Council, a hindrance of justice, and delay of poor men's causes'.[59]

This was not all. The division of the Lieutenancy in 1552 proved permanent. Save in time of war, there was never again a Lieutenant-general north of the Trent; in time of peace, the Lieutenancy was divided as in that year, the Lord President having a commission for Yorkshire only.[60] Even so, he held it apart from the Council in the North. This was quite in accordance with Warwick's policy, who preferred to distribute the power of the Crown in the North among several groups of officials acting independently of one another. So in his time some of the administrative authority that the Council had hitherto had was transferred to special commissioners. No longer did it receive commissions for sewers or for collecting subsidies, though it was still required to deal with those who refused to pay their dues. It also ceased to be included as a whole in the ordinary commissions of the peace for the northern counties, so that its magisterial authority henceforth rested solely on its special commission of the peace, now called a commission of oyer and terminer.[61] So much, indeed, did the Council in the North decline in power and prestige during the reign of Edward VI that at its close what had been the supreme executive and judicial authority north of the Trent had

[59] Border Papers, i. No. 65.

[60] Titus. F. xii. 301.

[61] Pat. 1 Mary, p. 1. m. 8. From 1558 the Lord President and Council were appointed simply '*justiciarios nostros*' instead of '*justiciarios nostros ad pacem*'; Pat. 1 Eliz. p. 4.

become little more than a glorified court of Quarter Sessions.

Mary's accession brought no change for the better, The men to whom Northumberland had entrusted the government of the North were moved by self-interest only, and although they kept the land beyond the Trent quiet during the brief reign of Lady Jane Grey, when once Queen Mary had been proclaimed they vied with one another in protesting their loyalty to her. Shrewsbury, who stood by Northumberland's side while Queen Jane was proclaimed,[62] was more loyal than most of his fellows; yet he too, when once the Duke had thrown up the game, hastened to make his peace with the new sovereign. After some hesitation, Mary accepted his submission, and on September 1, 1553, she signed the letters patent for the continuance of the Council in the North under his presidency.[63] She need have had no fear. It mattered little to Shrewsbury who ruled England so long as he ruled the land beyond the Trent, and he was ready to swear allegiance to whoever would allow him to keep the offices he held there.

Having accepted Shrewsbury's services, Mary wisely refrained from interfering with his government. The County Palatine and Bishopric of Durham were as a matter of course restored to Tunstall in 1554, and the Percy lands and the Earldom of Northumberland were restored to Sir Thomas Percy's son in April 1557 on the eve of a war with France that might bring war with Scotland too;[64] but in other respects all went on as before. In the Council itself few changes were made. No one was dismissed. Even Sir Robert Bowes, one of the witnesses to Edward VI's will and a

[62] *Queen Jane and Queen Mary*, p. 12.

[63] Pat. 1 Mary p. 1. m. 8.

[64] Rymer, *Foedera*, xv. pp. 461-2. In August of the same year he superseded Lord Wharton as Warden of the East and Middle Marches, Wharton retaining only the Governorship of Berwick (*ib.* pp. 468, 472, 475). The reason given by the Council to Wharton was 'the obstinate ill demeanour of some of the men of Northumberland, who', as he had reported to Shrewsbury on 26 July, 'notwithstanding warnings come not as commanded' to defend the Borders against the Scots (S. P. Dom. Add. Mary, viii. No. 27).

member of Queen Jane's Council, whose services to Northumberland had been rewarded with the Masterships of the Savoy and of the Rolls, was allowed to resign these offices in September 1553 and retire to the North, where he acted as Vice-president of the Council till his death in 1555.[65] Of the new members, only Sir Thomas Wharton owed his admission to Mary's desire to reward the loyalty he had shown when loyalty to her was dangerous.[66] The others — Lord Talbot, Sir William Vavasour, Sir Thomas Challoner, and Francis Frobisher, Recorder of Doncaster, — were all closely connected with Shrewsbury and were probably admitted at his request. Even in the Instructions issued in 1553—only two changes of moment were made. In Article 25, which ordered the Council to charge the people at the general sittings to observe the laws touching religion, all the words after 'the most Godlie service set forth' were omitted ; and in Article 26, dealing with enclosures, the Council was directed to 'make diligent inquisition of the wrongful taking-in and enclosing of commons and other grounds contrary to the laws', all reference to unreasonable fines and the raising of rents being omitted.[68] The first omission was a matter of course, Mary's policy in religion being what it was ; and the second must doubtless be ascribed to her anxiety to assure to herself the goodwill of the landed gentry. But the outcome of these changes was beyond question a further weakening of the authority

[65] Strype, *op. cit.* iii. pt. 2. p. 222 ; Foss, v. pp. 279, 354 ; Harl. 1088. Bellasis had died in July, 1552 ; *Yorks. Arch. & Top. Jour.* xiv. pp. 414-5.

[66] He was with her at Kenninghall when the news of Edward VI's death arrived, and he accompanied her to London (*Queen Jane and Queen Mary*, p. 4). He succeeded the Duke of Northumberland as Steward of the Queen's lands in the East Riding, and was made Feodary of the West Riding in reversion to Christopher Estoft (d. May 1568) (S. P. Dom. Add. Eliz. xii. No. 68 (1) ; xiii. No 21).

[67] Harl. 4990. f. 124. Sir Thomas Challoner of St. Oswald's and Nostel had married Joan, sister of Sir Thomas Gargrave's first wife, Anne Cotton (Hunter, *South Yorkshire*, ii. p. 214).

[68] Harl. 4990 f. 124 ff.

of the Council in the North, which bade fair soon to follow into oblivion the short-lived Council in the West.

Instead, before three years had gone by, the Council in the North had been re-established as the supreme administrative and judicial authority beyond the Trent. The change of policy was less capricious than it seems. The sixteenth century had already seen a great extension of the duties and powers of the justices of peace, and the social unrest that marked its middle years made a further extension inevitable. The mediaeval machinery for regulating economic and social life was breaking down; order was giving place to chaos; and the government was being forced to come to the rescue, replacing municipal and manorial regulation by national legislation. It was, however, easier to pass laws than to enforce them. Poverty and political necessity compelled the government to leave the execution of the new statutes to the Justices of Peace; and it was no easy task to persuade these men, drawn as they were from the gentry who had just recovered their influence and independence, to enforce laws imposing irksome restrictions and unwelcome burdens on themselves and their neighbours. For they were unpaid officials, and as such could hardly be controlled by the Crown. Yet control was urgently needed. "The powers given by statute law to the inferior magistracy had accumulated into a most extensive authority. Oftentimes that authority was delegated to those who were unfitted for the trust. Whatever traditionary respect we may entertain for the Old English gentleman, it must be confessed that the character was then scarcely formed. The country abounded with knights and squires of the first edition whose fathers had served in the hall of the great, or who had been humble courtiers at the palace, or had toiled in the shop of the city chapman, men without principle, refinement or education, and not subjected to the salutary check of public observation and public opinion. The annexation of the powers of the conservancy of the peace to the municipal authorities raised up

nests of petty tyrants in the smaller Corporations. Much unsoundness lurked in the community at large .... Religion had lost its influence .... Men's consciences were seared. The feelings of honour exercised but a slight control, and fraud and cozenage took the place of the misdeeds of a sterner age".[69]

It is true that the charge of low birth could not as a rule be brought against the northern county magistrates, most of whom could claim an ancestry of considerable distinction in the field or in the law courts; but religious unrest and the failure of the government to provide the religious teaching required to give the people the moral instruction once given by the priest in confession had fatally lowered, or at least failed to raise, the tone of private and public morality, which was further debased by the example set in high places. It was imperative, if the country were not to slip into a very slough of corruption, that there should be some supervision of the justices of peace.

So far as the North is concerned, the supervision of the Justices could be entrusted only to the Council at York. Its efficiency, however, had been so much impaired since Shrewsbury became Lord President that reform was urgently needed to fit it to fulfil as it should its duties as guardian of public justice and public welfare. The urgency of the need was brought home to the government in 1555 by an enquiry into the state of the Borders which showed how rapidly they had decayed since the conclusion of peace with Scotland in 1550 had stopped the demand for horses and corn and flooded the labour-market with disbanded soldiers;[70] and the opportunity was afforded in the very same year by the deaths of Babthorpe, Bowes and Chaloner in quick succession.

By good fortune, the Vice-presidency, left vacant by the death of Sir Robert Bowes, was given to Sir Thomas Gargrave, who had long been Shrewsbury's right-hand man

[69] Palgrave, *The Privy Council*, pp. 104-8.

[70] Cotton MSS. Calig. B. ix. 6.

in the Council. Born at Gargrave in graven and bred to the law, he attached himself to Shrewsbury, who made him steward of his Lordship and Soke of Doncaster and Deputy-Constable of Pontefract.[71] It was probably through his influence too that Gargrave was admitted to the Council in the North in 1544 in the room of Sir Thomas Tempest, as it was at the Earl's instance that he was knighted in Scotland by the Earl of Warwick in 1547.[72] *Custos rotulorum* for the West Riding, burgess for York in the first parliament of Edward VI and again in 1553, then a knight of the shire for the whole county in Mary's reign, and at last Speaker of the Commons in Elizabeth's first parliament,[73] Gargrave played a great part in the public life of his county, so that it was almost a matter of course that after the deaths of Sir William Babthorpe and Sir Robert Bowes, Shrewsbury, who had always left the Signet of the Council in his custody in vacation time, should nominate him Vice-president of the Council. This office he held under no fewer than five Lords President almost continuously down to his death in 1579;[74] and such was his influence that it is hardly too much to say that for quarter of a century he was the real ruler of the North. He may not have been a profound lawyer — he denied the impeachment himself[75] — but he was an able man of affairs, and to him must be given most of the credit for developing the Court at York out of the King's Council in the North. For he found the Council little more than a group of commissioners chosen almost at random

[71] *Records of Doncaster*, ii. p. 20; S. P. Dom. Add. Eliz. xii. No. 68 (1).

[72] Lodge, *Illustrations of British History*, i. p. 156; Harl. 1088.

[73] S. P. Dom. Eliz. ii. No. 17; Cartwright, *Chapters in the History of Yorkshire*, p. 4-5.

[74] Border Papers, i. No. 68; Harl. 1088.

[75] Writing to Cecil, 2 Sept. 1572, to urge the appointment of Ralph Rokeby the elder as a member of the Council in the North, he says, "Mr. Tankard is aged and sickly, and there is none other but Mr. Meres that knows the law; the little I learned is forgotten, as it is 28 years since I left the study of the law, and so long since I was of the Council" (S. P. Dom. Add. Eliz. xxi. No. 84).

among the royal officials in the North, who met at York in a sort of glorified Quarter Sessions to administer criminal justice and to hear poor men's suits in equity; he left it the supreme court of justice and equity north of the Trent, independent of Chancery and a serious rival to the Courts at Westminster.

The first steps in this direction were taken in 1556 when, at Gargrave's instance,[76] new Instructions were issued to Shrewsbury authorising the Lord President, with the advice of two of the Council, to appoint an Attorney to prosecute for the Crown by information as by indictment before the Council all offences of treason, felony, riot, breach of the peace, and other misdemeanours against good order, and by empowering the Council to take fines and amercements, not only of such offenders, but also of justices of the peace, sheriffs, mayors, bailiffs of liberties, and other officers, who neglected their duties or abused their powers, The Council was at the same time also empowered to proceed against contemptuous and disobedient persons by proclamation of rebellion as used in Chancery, and to punish them by imprisonment, fines, amercement, or otherwise; and in order that the Instructions should have due effect, the Council was required to summon before it once a year the justices of peace in Yorkshire, and if need arose, of the other shires likewise, to inquire of things and matters amiss and mete to be reformed, to take order for their reformation, and if any notable offence appear in any justice of peace, to take order by fine or otherwise for reformation, or else to take bond for the offender's appearance before the Council in the Star Chamber.[77] No time was lost in carrying out these instructions, and in April 1557 Articles were devised by the Lord President and Council to be put in execution by the Justices of the Peace and others within the county of York, which were the forerunners of many others drawn up from time

[76] Gargrave to Cecil, 10 Nov. 1560; Border Papers, iii. No. 424.

[77] Ib. i. No. 64.

to time during the next fifty years. And when all or most of the Justices disregarded the Articles and neglected their duties therein, the Council in the name of the King and Queen required them to declare themselves willing to 'redubb' their former defaults, warning them that if they failed to do so, order would be taken for their repair to York to answer the same.[78]

Other reforms there were that were urgently needed. The practice of holding all the sessions at York ought to be given up, and the Council ought to resume its visits to the Border shires, if the Justices there were to be brought under control. There was also great need for the establishment at York of a household continually kept as well in the vacation as in term time, where the Lord President or Vice-president, and certain of the learned Councillors, with the Secretary, might always abide 'for the honor and service of the Queen, estimation of the Council, for the administration of justice'.[79] But so long as Shrewsbury remained Lord President these reforms could not be made, and his Presidency ended only with his life.

However much Elizabeth may have wished to give the Presidency of the North to one who was 'fully assured to be trusted in religion', she could not afford at the beginning of her reign to offend the leader of the moderate Catholic party, so her accession in November 1558 brought few changes in the North. In the Council, Sir Henry Percy took Sir Anthony Neville's place; the places left vacant by the deaths of Sir Henry Savile and Sir Leonard Beckwith and the removal of Richard Norton, were given to Christopher Estoft, *Custos Rotulorum* of the East Riding and Feodary of the West Riding, Henry Savile of Lupset, Surveyor of the Crown lands north of the Trent, and Richard Corbett of Wortley, a learned Civilian and a member of the Council of Wales and the Marches; Sir Henry Gate, Leicester's deputy as steward and constable

[78] *Sir George Wombwell's MSS., Various Collections*, ii. pp. 89 ff.

[79] Border Papers, i. No. 65.

of Pickering Lythe, John Vaughan of Sutton, Steward of the Crown lands in Cumberland and Westmorland, were added.[81] As for the Instructions, those given to Shrewsbury when his commission was renewed in December 1558[82] differed in no way from those of 1556 save that the Queen took into her own hands the appointment of the Attorney.[83]

It was, of course, impossible that things could remain indefinitely as they were at this time. A Lord President who voted against the Acts of Supremacy and Uniformity, and a Council whose members refused to take the oath for the Queen's supremacy,[84] could not be expected to enforce the Elizabethan Settlement till they must. For the moment, Elizabeth was content to leave well alone, so long as no open opposition was offered to her policy; not until the French had been expelled from Scotland and the Reformation there had been carried through could she venture to impose religious uniformity beyond the Trent. But when Shrewsbury died (21 Sept. 1560) the frontier had been made safe by the Treaty of Leith, so that there was no longer any reason why she should not insist on the laws touching religion being observed in the North as in the South.

To this end the chief dignitaries of the Province of York were now added to the Council, the Archbishop of York, the Bishop and the Dean of Durham.[85] At the same time an Article (39) was added to the Instructions requiring the Lord President and Council to aid the Bishops, Ordinaries and Commissioners for Matters of Religion, 'as well for the due observance and execution of all things sett forth in the Book of Common Prayer and Administration of the Sacraments and in the Injunctions, as also

[81] S. P. Dom. Add. Eliz. xii. Nos. 11, 68 (i); xiii. No. 21; Greenwood *Hist. of Dewsbury*, p. 204.

[82] Pat. 1 Eliz. p. 4.

[83] Border Papers, i. Nos. 63, 64; iii. No. 427; iv. No. 584.

[84] Ib. iv. No. 295; S. P. Dom. Eliz. xx. Nos. 5,25.

[85] Ib. xx. No. 5.

for the apprehension, correction, and punishment of all such persons as shall contempne or disobey the said Bishops, Ordinaries, or Commissioners and that the said Bishops and Ordinaries be assisted in the punishment of such as do dayley marry unlawfully and against the law of God and the Realm And of such others as notoriously lyve and contynue in Adultery to the slander and infamy of God's people'.[86] After this it was but a matter of course that the Council in the North should be included in a Commission for Ecclesiastical Matters in the Northern Shires, in which the Lord President was named after the Archbishop of York, so that it became in effect the Court of High Commission for the Province of York.[87]

This was only one of a number of almost equally important changes in the Council's Instructions and powers that were made at this time; for advantage was taken of the vacancy of the Presidency to complete the re-organisation of the Council begun under Mary. In consultation with the Vice-president, Sir Thomas Gargrave, the Secretary, Thomas Eynns, and the Attorney-general, Cecil set about revising the Instructions thoroughly;[88] when the work was finished and the new Instructions were issued to the new Lord President, Henry, Earl of Rutland, in January 1561,[89] they had assumed the form they were to retain, with few modifications, for close on half a century.

The most important of the new articles was the 11th, whereby the Lord President was required to keep house always either at York or at some other meet place, and if

[86] The Instruction to assist in punishing those who unlawfully marry probably had reference to the Earl of Westmorland, who in Sept. 1561 was cited before the Archbishop of York for keeping as his wife his late wife's sister (S. P. Dom. Eliz. xix. Nos. 25, 53). Elizabeth, of course, could not admit the lawfulness of marriage with a deceased wife's sister.

[87] *For. Cal. 1561-62*, No. 232.

[88] Suggestions made by Gargrave, Border Papers, iii. Nos. 425-426; by Eynns, ib. i. Nos. 64, 65; amendments by Cecil, ib. iii. Nos. 427, 428, and iv. Nos. 583-4, 587.

[89] His commission is dated 20 Jan. 1561; Pat. 3 Eliz. p. 11.

he were absent on private business, to leave the Steward there and to give order for the diet of the Councillors whom he should appoint to remain there with the Secretary for the convenience of suitors. The new Lord President at once began extensive repairs on the King's Manor House at York,[90] henceforth the official residence of the Council in the North, and arranged for the Councillors bound to continual attendance to reside there in turn during the vacations.[91] Establishment at York had the same effect on the Council there that establishment at Westminster had had on the Courts of Common Pleas and King's Bench and, more recently, on the Courts of Chancery and Requests, and it became a permanent court of justice and equity.

Moreover, the provision that the Vice-president, with one or more of the legal members, the Secretary and the Pursuivant, should always be in residence (Art. 38) made possible the development of the Council as a court of summary jurisdiction in civil as in criminal cases, and the amount of business done before it increased rapidly. It increased the more rapidly because the Council's jurisdiction was now extended to the giving of false witness, wilful perjury, forging of false deeds, maintenance and other misdemeanours touching breaches of the laws (Art. 33), all of which the Attorney was authorised to prosecute for the Queen in the vacation as in the sessions (Art. 35). At the same time the Council's power to proceed against notable offenders with 'entire and direct severity' was augmented, its procedure being more closely assimilated to that of Chancery and authority being given to sequester the lands, goods and chattels of those who set it at defiance (Art. 29), and to call upon the Wardens of the Marches and the Governors of Berwick and Carlisle to arrest such offenders as the sheriffs could not take (Art. 41).

[90] S. P. Dom. Add. Eliz. xix. No. 6; *For Cal. 1561-62*, Nos. 215, 218. The palace was so much defaced by 1561 that only one large room remained.

[91] Dyer, *Rep.* ii. p. 236a, Mich. 6 & 7 Eliz.

If the Instructions of 1561 had done no more than increase the efficiency of the Council as a court of justice and equity and emphasise its position as a law-court, they would still have marked an important stage in its history; but as it was, they also went far to restore the executive responsibility lost under Edward VI. It was not only that the Council was directed to admonish the Wardens and the Justices of the Peace to enforce the Tillage and Enclosure Acts and empowered to issue commission for their execution (Arts. 42, 43). The general direction to the Council to punish breaches of the laws was not confined to these Acts but was held to extend to all the penal laws, including those passed in 1563 touching servants and labourers, the relief of the poor, and vagabonds. This view was confirmed in 1564 by a legal decision affirming the right of justices of oyer and terminer and of peace to enforce the penal laws when execution was not reserved for a special court.[92] So, with the growth of penal legislation under Elizabeth and her successors, the Council in the North rapidly gained, under the guise of magisterial authority, general administrative functions which more than compensated it for the powers it had lost to the justices of peace and the Wardens of the Marches, so that ere long it became once more the supreme judicial and administrative authority beyond the Trent.

[92] Border Papers, iv. No. 583.

CHAPTER III.

Shrewsbury's Successors, 1561-1572.

All through the history of the Council in the North there is noticeable a tendency to transform it from an administrative council into a judicial court. This tendency became stronger as the control of the central government over the outlying parts of the kingdom became firmer, and by the end of Elizabeth's reign the Council had become almost exclusively a court of justice and equity, most of its administrative duties having passed to the Justices of the Peace. Unfortunately, owing to the loss of its registers and records we know but little of its judicial work before the close of the sixteenth century when its very success brought it into sharp conflict both with the local courts and with the courts at Westminster. Thanks, however, to the preservation of a good deal of the correspondence of the Elizabethan Presidents with the Secretaries of State, we know more of its activities as an administrative council.

For the most part these arose out of the resistence of the North to Elizabeth's policy in church and state. Like her father's, that policy had the twofold aim of delivering English sovereignty from the competition of rival jurisdictions, secular and ecclesiastical, domestic and foreign, and of centralising the state by means of personal monarchy; and like her father, she had to meet the resistence of the Catholics, of the lords of liberties, and of the old nobility, who hated the 'new men' upon whom she leaned. So she set herself first to break the power of the northern lords and then to enforce her religious settlement in the north as in the south.

At first she had good hope of success. She could not,

indeed, undo her sister's work and re-unite the county palatine of Durham and the Percy lands with the crown; but a statute passed in her first parliament[1] enabled her to wrest from the Bishop of Durham the liberties of Norham, Creik and Allertonshire,[2] Sir Ralph Grey was forced to let his castle of Wark and his baronies of Wark and Wooler to her at a low rent,[3] and proceedings in the Court of Wards deprived Leonard Dacre, the ablest of Lord Dacre's sons, of the lands that had come to him under the will of his cousin, Sir James Strangways, nearly twenty years earlier.[4] Then the outbreak of war with Scotland afforded a pretext for taking the control of the Marches out of the hands of the men to whom it had been entrusted by Mary. The Earl of Northumberland was forced by a series of petty slights and insults to resign the Wardenship of the East and Middle Marches and the Keeperships of Tynedale and Redesdale,[5] and although Lord Dacre was allowed to retain the Wardenship of the West March a few years longer, he was kept much at court.[6] At the same time many tried soldiers were discharged from the Border service, simply because they were born in one or other of the Border shires,[7] and the custody of the northern strongholds was given to 'inland' men.[8]

Thus to secure the control of the Marches was a distinct gain for the Crown; but it was dearly bought. The new officials were often absentees who regarded their offices merely as places of profit and left the castles in their care to fall into ruins, while they fined the tenants and enclosed the lands; faction was left to rage unchecked and disorder

[1] 1 Eliz. c. 9.

[2] Ingledew, *History of Northallerton*, p. 104. Allertonshire and Creik were given back in 1566, but Norham remained in the Queen's hands.

[3] *For. Cal. 1561-62*, nos. 672-3, 879.

[4] S. P. Dom. Add. Eliz. xi. nos. 75-7.

[5] *State Papers of Sir Ralph Sadler*, ii. pp. 58, 79, 108.

[6] *For. Cal. 1561-62*, no. 323.

[7] *Ib. 1560-61*, no. 735.

[8] *Ib. 1563*, no. 1280; Calig. B. ix. 6.

grew, while the decay of the Borders went on apace.[9] Soon men began to look back with longing to the good old days when they were ruled by great lords who ever kept open house and rode always with orderly apparel and a noble company of servants;[10] and "the olde good-wyll of the people, deepe graftyd in their harts, to their nobles and gentlemen",[11] grew stronger, until Elizabeth's most faithful servants had to admit that in the north country they knew no prince but a Percy or a Dacre.[12]

With her settlement of religion she had even less success. It was, in fact, impossible to enforce it so long as Shrewsbury remained Lord President, and during his lifetime the Acts of Uniformity and Supremacy remained a dead letter in the North, where things went on very much as they had done under Mary, even 'the altars standing still in the churches contrary to the Queen's Majesty's proceedings'.[13] Shrewsbury's death in September 1560, just after a reforming and pro-English government had been established in Scotland, cleared the way for the appointment of a Protestant Lord President in the person of the Earl of Rutland.[14] To strengthen his hands the Instructions were, as we have seen,[15] revised; and at the same time some changes were made in the membership of the Council, Pilkington and Young, the Protestant successors of Tunstall and Heath in the sees of Durham and York respectively, being admitted to it, together with Ralph Skinner, the new Protestant Dean of Durham.[16]

Rutland went north in February 1561 prepared to enforce all the penal laws, including those touching religion;[17]

[9] *Ib.*; *Cal. S. P. Dom. Add. 1564-65*, pp. 465, 468-9, 471, 507; *Halfield Cal.* i. no. 1211.

[10] *Cal. S. P. Dom. Add. 1566-79*, pp. 255-9; cf. *ib.* pp. 74, 81-2.

[11] Sharpe, *Memorials of the Rebellion of 1569*, p. x.

[12] *For. Cal. 1561-62*, no. 323; *ib. 1569-71*, no. 568.

[13] *Ib. 1551-9*, no. 572.

[14] 20 Jan. 1561; Pat. 3 Eliz. p. 11.

[15] Pp. 188 ff.

[16] S. P. Dom. Eliz. xx. no. 5. [17] Border Papers, vi. no. 10.

but he had straightway to warn Cecil that he did not find the country so forward in religion as he wished it to be.[18] It was, therefore, only very cautiously that the Council in the North set about correcting the more obvious abuses. Under a commission for Ecclesiastical Matters in the Northern shires issued in June 1561,[19] which made the Council in the North virtually the Court of High Commission for the Province of York, the newly-appointed Archbishop of York, assisted by some of the Council, began a visitation of his Province. In the course of it, many of the clergy were deprived; but the commissioners refrained from administrating the oath of supremacy to the laity.[20] They could, indeed, hardly do otherwise when the legal members of the Council itself refused to take the oath, thinking it a wrong to have it proffered to them, because none of their calling had taken it;[21] nor durst the government touch them, 'the judges and most of the lawyers, both of the common law and the civil, being unfavourable to the Queen's policy in religion'.[22] The same caution was shown with regard to the 'Test' Act of 1563, and when Rutland died (17 Sept. 1563), no steps had yet been taken to enforce it. Further delay was caused by the appointment of Leicester's elder brother, Ambrose, Earl of Warwick, to the Presidency of the North while he was commanding the English forces at Havre.[23] On his return, it was found that his health had been so shattered by the campaign that he could not endure the cold of a northern winter; so it was not till Archbishop Young had been appointed Lord President in May 1564[24] that the campaign against northern recusancy could be resumed.

[18] 25 Feb. 1561; ib. iv. no. 685.

[19] 2 June 1561; ib. no. 232.

[20] Gee, *The Elizabethan Clergy*, p. 169.

[21] Border Papers, iv. no. 295; cf. S. P. Dom. Eliz. xx. nos. 5, 25.

[22] Lans. 102. 79.

[23] *For. Cal. 1564-65*, nos. 186, 266; *Pepys MSS at Magdalen Coll. Camb.*, p. 12, Randolph to Lord Robert Dudley, 15 Jan. 1564.

[24] Pat. 6 Eliz. p. 8. His Instructions were issued 17 June 1564; Titus. F.iii. 158.

It was indeed high time that the laws touching religion should be enforced in the North. An enquiry into the religious state of the country made through the bishops in 1564 showed that 'hardly a third of the whole number of Justices' and less than half the gentlemen of England' were 'fully assured to be trusted in the matter of religion'.[25] In the diocese of Chester, which was notoriously Catholic, the churches were empty. In Cumberland and Westmorland there were churches where Mass was still said openly; and in Richmondshire there were many churches where, owing to the ignorance of the pastors, there had been no sermons since the beginning of the reign.[26] It was the same in Northumberland, where in many parishes the vicars had to serve from 2 to 5 chapels each; and in Durham, where there were great parishes from which the Queen received large revenues, which yet had neither parson nor vicar but a lewd priest to whom she allowed £4 or £5 a year, and some had no curate at all.[27] So everywhere the people gladly hired for small wages the Scottish priests who had fled from Knox's reformation and now did 'more harm than any other would or could in dissuading the people'.[28] Nevertheless, Archbishop Young wrote to the Queen in June 1564,[29] "This country is in good quietness, and the common people tractable touching obedience in religion . . . The stay against religion in these parts was only the nobility, gentlemen and clergy; and although the nobility remain in their wonted blindness, yet the gentlemen begin to reform themselves, and the clergy also". As he acted in accordance with this opinion and took no steps to enforce the laws touching religion, it is not surprising that during his Presidency religion steadily

[25] *Hatfield Cal.* i. no. 1024; *Camd. Misc.*, ix; S. P. Dom. Eliz. xxxvi. no. 65.

[26] *Cal. Sc. P.* ii. no. 529; *Cal. S. P. Dom. Add. 1566-79*, p. 64.

[27] S. P. Dom. Add. Eliz. xii. no. 108.

[28] *Camd. Misc.* ix.

[29] 30 June 1564; *For. Cal. 1564-65*, no. 533.

declined in the North until Sadler could write in December 1569, "There be not in all this country ten gentlemen that do favour and allow of Her Majesty's proceedings in religion, and the common people be ignorant, full of superstition, and altogether blinded with the old Popish doctrine".[30]

All through his Presidency, however, Young showed surprising favour to men who at best were but doubtful Protestants. It was at his instance that William Tankard of Boroughbridge, Recorder of York, an old retainer of the Percies who had been 'out' in 1536,[31] and Sir John Constable of Holderness, the Earl of Westmorland's brother-in-law, were admitted to the Council in the North in 1566,[32] although neither was 'assured to be trusted in religion'. The second of these admissions was particularly unfortunate, for it involved the Lord President in a long-standing feud between Constable on the one hand and Sir Henry Gate and John Vaughan, two of the Council, on the other, and in 1567 Vaughan roundly accused him to the Privy Council of maintaining Constable and his friends against himself and Gate.[33] Thereupon the Lords of the Council ordered that Constable should be removed from the Council and bound over to keep the peace, as should several of his friends and some of Gate's, and admonished the Archbishop that as Lord President he should do his utmost to encourage those loyal to the Queen and the true religion, and 'the contrary to exclude from favour and credit'.[34]

Why Young acted thus, we can only surmise; but there is reason for thinking that Vaughan was not far wrong when he not only accused the Lord President of being sometimes too severe and sometimes too remiss, but also charged him with corruption and asserted that he thought

[30] *Cal. S. P. Dom. Add. 1566-79*, p. 139.

[31] *L. & P.* xii. pt. 1. no. 1011.

[32] Vesp. F. xii. 135; Harl. 1088; S. P. Dom. Add. Eliz. xiv. no. 34; ib. xxi. no. 86 (2).

[33] Lans. 10. ff. 2, 4 ff.

[34] 6 Dec. 1567; *Longleat Mss.* ii. p. 19.

only of personal gain when advising as to the filling of vacancies in the Council.[35] It is a regrettable fact that more than one of Elizabeth's ecclesiastical dignitaries was by reason of his self-seeking quite unfit to commend the Protestant cause to his flock. Whittingham for instance, who succeeded Skinner as Dean of Durham, was guilty of much iconclastic zeal not unprofitable to himself;[36] and Pilkington used his opportunities as Bishop of Durham so well that he was able to give his daughter a dowry of £10,000.[37] Worse than either was Archbishop Young. He had not been a year in his see before he quarrelled with one of his tenants, Ellis Markham, against whom he brought an action in Trinity Term 1562 under the statute *De Scandalis Magnatum* for putting forward a slanderous bill against him before the President of the Council in the North parts, surmising that he was a covetous and malicious Bishop; but the opinion of the judges in King's Bench was that the words were not sufficient to maintain the action.[38] Three years later, when he himself was Lord President, his tenants of Cawood and Westowe brought before the Privy Council a complaint against him which was referred by a special commission to some of the Council in the North for inquiry to be made into the controversy at York (17 Nov. 1565).[39] To greed he added vanity. At the very beginning of his Presidency he ventured to stay a writ sent by the Lord Chief Justice of Queen's Bench for one John Lamburne, indicted before the Council in the North for robbery, refusing to allow him to be moved even when the sheriff received another writ to send him up under penalty of a fine of £100. In the end a writ of attachment was issued against the Archbishop himself

[35] Lans. 10. ff. 2, 4; *A.P.C. 1558-70*, p. 231.

[36] *Camd. Misc.* vi, 'Life of Whittingham', p. 32-3, n. 3; *cf.* S. P. Dom. Eliz. cxxx. no. 24.

[37] Ingledew, *op. cit.* p. 104.

[38] S. P. Dom. Eliz. xx. no. 22; Moore's *Reports*, 123, Le Case del Archevesque de Everwick, Trin. 4 Eliz.

[39] *A.P.C. 1558-70*, pp. 265-6, 293.

which he had to obey (1565); and the outcome of it all was that a precedent had been established of which Coke and Hyde made the most when they set about curtailing the Council's authority in the next century.[40]

In the circumstances, it is not surprising that many irregularities appeared in the administration over which Young presided; and it is even possible that there was a basis of truth in Sir Richard Cholmley's allegation that the Council in the North had taken to their private uses fines to the amount of 1000 marks.[41] It is certain that Young's successor made it his first business to inquire into and set right what things were amiss. From the memorial then drawn up (Oct. 1568) we learn that in the late President's time the penal statutes, notably those concerning Tillage and Armour, had not been enforced; that cases were allowed to linger for the gain of the ministers which might have been dismissed long since; that the learned members of the Council were allowed to act as counsel in suits before it;[42] that the attorneys were allowed to run up costs unduly and to present bills without the leave of the court, often not bearing the names of the parties, and many of them purely malicious; that the sittings and decrees were not always entered in a book of record; and that although power had been given to the Lord President to appoint some of the learned Councillors with the Secretary to execute the commissions in his stead at Carlisle,[43] no sittings had been held either there or at Newcastle for three or four years, to the hindrance of justice and the great impoverishment of the Borders.[44]

That Young should have been allowed to retain the Presidency of the North would be surprising were there

[40] S. P. Dom. Add. Eliz. xii. no. 32; Coke, *Rep.* xii, The Case of the Lord Presidents of Wales and York; *Parl. Hist.* ii. p. 666.

[41] Lans. 6. f. 184; *A.P.C. 1558-70*, p. 231.

[42] E. g. Tankard; Vesp. F. xii, 135, Wharton to Sussex, 12 Aug. 1568.

[43] Instructions of June, 1564, Art. 22; Titus. F. iii. 158.

[44] S. P. Dom. Add. Eliz. xiv. nos. 25, 42, 69; Vesp. F. xii. 135.

not reason for suspecting that it was just to his easy morality that he owed his continuance in favour. Certainly, it is significant that the only instances which can be established of the Crown interfering with the administration of justice by the Council in the North for its own ends belong to his Presidency.

In the first instance, the Council was required to set aside in its administrative capacity decrees that it had given in its judicial. Among the statutes to the enforcing of which it was instructed to give special care[45] was one for enclosing with quickset hedge and ditch lands within twenty miles of the Border.[46] As the tenants, on whom the cost fell, refused to enclose their holdings unless these were assured to them by lease or otherwise, and the landlords, following the Queen's example, refused to grant this most reasonable demand, the statute remained practically unenforced till 1565.[47] Then, however, war with Scotland being in sight, the Council in the North was suddenly required to enclose all the crown lands in Northumberland, Cumberland, North Lancashire, Richmond, Middleham and Barnard Castle. As the statute applied to the Border shires only, the tenants of the Yorkshire lordships resisted its arbitrary extension to their lands and insisted on their tenant-right. Their claim was supported by the Earl of Northumberland as High Steward of Richmond and Middleham, who showed 'how much the former Councils respected the antiquity of their custom'.[48] His remonstrances were met by a sharp reprimand for not considering the Queen's interest alone, and the commissioners sent by the Council to let the parks and farms on the crown lands on condition of military service and enclosure by quickset hedge, were instructed to ignore the High Steward altogether.[49] It is not surprising that

[45] Instruc. 1561, Arts. 42, 43.
[46] 1 & 2 Ph. & M. c. 1.
[47] *For. Cal. 1561-62*, nos. 370, 680; *ib. 1562*, no. 87.
[48] S. P. Dom. Add. Eliz. xii. no. 25.
[49] Ib. nos. 10, 23-5.

Richmondshire alone sent 1200 men to aid the Earls of Northumberland and Westmorland in 1569.[50]

Far more serious, however, were the consequences of the crown's interference with the administration of justice in a case which came before the Council in the North in 1566. After Lord Dacre's death in 1563, his second son, Leonard, vainly sought to obtain from his elder brother two deeds entailing the Dacre and Greystoke lands on the heirs male. Insisting that the entail of the Greystoke lands — by far the most valuable portion — was invalid because the condition of the entail — the enfeoffment of the Parson of Greystoke and the Steward of the Dacre lands within twenty days — had not been fulfilled, and that even if they had, the entail was void because these lands were already entailed to himself and his heirs, Lord Dacre refused to surrender either deed. Maintaining that this entail had been limited to the heirs of his brother's first marriage — which was childless — Leonard brought the matter before the Council in the North in January 1566 by way of a replevin. Witnesses were examined and depositions were taken which thirty years later were held to establish the entail to Leonard and his brothers;[51] but now the Council, apparently under pressure from above, decided against him[52], as did the Court of Star Chamber when Parson Dacre by means of a forcible entry forced Lord Dacre to bring the case before that court. Shortly afterwards, Lord Dacre died, and Elizabeth having given the wardship of his only son to the Duke of Norfolk, Leonard and his brothers made suit before the Master of the Rolls and the Chief Justices that the Duke should be made to deliver the deeds to them, only to be again refused (Oct. 1566).[52]

[50] Sharpe, *op. cit* p. 143.

[51] P. 226.

[52] S. P. Dom. Eliz. xl. no. 86; *Cal. S. P. Dom. Add. 1566-79*, pp. 258-9; *The Household Books of Lord William Howard* (Surtees Soc.), pp. 374 ff; Star Chamber Proc. D. 11. 28. If the depositions did not prove Leonard Dacre's claim to be sound, there would have been no need for Norfolk to ask Sussex in 1569 to destroy them; Harl. 6996. No. 55.

So far as consequences are concerned, this case was by far the most important that ever came before the Council in the North. Nothing less than the right to a great barony was involved in it; and if the Council could have made good its claim to take replevins by English bill and to have evidence given before it treated as of record, it must in the end have wrested from the courts at Westminster the greater part of their business beyond the Trent. This the common lawyers saw well enough, and when the time came for them to attack the Council in the North, it was in the series of cases concerning the Dacre lands, of which this was the first, that they found their most effective weapons.[53] At the time, however, the importance of this case was political rather than legal; for before the year was out 'Dacre with the crooked back' was sending letters every month to the Queen of Scots.[54]

There can be little doubt that it was fear of an understanding between the Catholics and her rival for the crown that had all along determined Elizabeth's policy in the North. Yet, Catholic as the North was, there had at first been no thought of deposing her in favour of Mary Stuart. For the most part the Catholics were content to accept Elizabeth's rule as the only refuge from civil war, so long as the recusancy laws were not enforced; and the few who were not, favoured the claim of the Countess of Lennox and her son, Lord Darnley, rather than that of the Queen of Scots.[55] The Lennox faction, however, was too small to be dangerous; and the Council in the North had no difficulty in dealing with it, even after Darnley's marriage with his cousin. To render the faction powerless it sufficed to send Lady Lennox to the Tower, keep the Earl of Northumberland at court, and imprison Sir Richard Cholmley

[53] P. 365.

[54] *Cal. Sc. P.* ii. no. 407; Haynes, p. 445.

[55] *Cal. Spanish S. P.* i. no. 135. The leaders of the faction were the Earl of Northumberland and Sir Richard Cholmley of Whitby Strand; S. P. Dom. Add. Eliz. xii. no. 68 (ii).

and the leading recusants.[56] For some time longer, Mary's distrust of the Lennoxes and their friends, her husband's murder, her marriage with Bothwell, her abdication and imprisonment, all served to keep apart the English Catholics and the Queen of Scots. But even in Darnley's lifetime, as his worthlessness became evident, his supporters had begun to transfer their allegiance to his wife; and by 1568 the Scottish Queen's claim to the English crown was generally recognised by the English Catholics.

Nevertheless, they were still a long way from seeking to place her on the throne by force of arms. The truth is that so far as the leaders at least were concerned, resentment at Elizabeth's policy in religion was of less account than resentment at her policy in government. Northumberland, for instance, was the leader of the Lennox faction long before he was reconciled to Rome; whereas Leonard Dacre, Catholic as he was, had no dealings with either of the Catholic claimants to the English crown until Elizabeth's persistent efforts to rob him of his inheritance drove him into her rival's party, and to the end he was ready to abandon Mary's cause whenever he had hope of favour from Elizabeth. Moreover, the objectionable features of the Queen's policy and administration were generally ascribed to the influence of Cecil and Leicester, and the Catholics as a whole were encouraged to hope that through their removal they would obtain concessions, or at least toleration, in religion and the settlement of the succession by Mary's recognition as heir-presumptive.

The encouragement was derived from the knowledge that many of the Protestants were as anxious as they for Mary's recognition, since Elizabeth would not marry; and that the administration was just as unpopular with the Protestant nobles as with the Catholic. The Duke of Norfolk with the Earls of Sussex, Arundel and Pembroke and others of the old nobility viewed with a jealousy and distrust hardly less than Northumberland's and Dacre's

[56] Teulet, *Rélations*, v. 1217; *Cal. Sc. P.* ii. nos. 178, 185, 213.

the confidence bestowed by the Queen on 'new men' like Cecil and Leicester, and ambition and revenge alike urged them to join the Catholics in seeking to remove their rivals from the royal counsels. Their efforts were without avail; but they account in part for Elizabeth's caution in forcing her religious settlement on the North, and they fostered expectations of a change of policy that were not without effect on the Catholics, both English and foreign.[57]

It was by the arrival of Mary, Queen of Scots, at Workington on 16 May 1568 that the discontent of the northern Catholics with her rival's rule was quickened until it broke into open revolt. Their first object was to get Mary into their own hands, hoping 'by having her to have some reformation in religion, or at least some sufferance for men to use their consciences as they were disposed; and also the liberty of freedom of her whom they accounted the second person and right heir apparent'.[58] Only when foiled by the Deputy-Warden of the West March, who held her a prisoner in Carlisle Castle until Elizabeth ordered her removal to Bolton Castle under a guard of troops from Berwick, did they seek the aid of the Protestant lords who were now as anxious as they to have the succession settled in Mary's favour.

For the moment, the party led by Norfolk and Sussex was in the ascendant at court. Cecil had urged that Elizabeth should, in virtue of her superiority over Scotland, find Mary judicially guilty of her husband's murder and keep her in England as a hostage for the neutrality of France and the subservience of Scotland.[59] But the Queen recognised that, as Sussex pointed out, 'one that hath a crown can hardly persuade another to leave her crown because her subjects will not obey', and she realised to the full the danger of breaking with her rival until it was certain that no one would or could take up arms on her behalf. So she inclined

[57] La Mothe Fénélon, *Correspondance*, i. 258.

[58] Northumberland's Confession, Sharpe, *op. cit.* p. 189 *ff.*

[59] *Cal. Sc. P.* ii. no. 679.

at first to the policy of Sussex, who would have her clear Mary of the charge of murder and restore her to her throne, if in return the Queen of Scots would ratify the Treaty of Leith and break the Scottish league with France.[60] Therefore when Young died at the end of June 1568, she at once made Sussex Lord President of the North in his stead,[61] and appointed him and his nephew, the Duke of Norfolk, together with Sir Ralph Sadler, her commissioners to meet the representatives of Mary and the Scottish lords in conference at York.

The real object of this conference was to arrange a Tripartite Treaty embodying Sussex's policy;[63] and to facilitate it the Catholics suggested that as a guarantee of good faith Mary should marry Norfolk.[64] All seemed to be going well; but during Sussex's absence Cecil regained his ascendancy, and Elizabeth suddenly summoned the commissioners to London to arrange an alliance with Moray whereby she undertook to support him as regent and to keep his sister in England on condition that James was entrusted to her own care.[65] This plan was thwarted by the Scots, who would have none of it; and the country, now on the verge of war with Spain, was rapidly drifting towards civil war[66] when Cecil bent before the storm so far as to offer Moray a new Tripartite Treaty and urge him to further Norfolk's marriage with Mary (16 May 1569).[67] But the danger passed away almost at once. On the death of Leonard Dacre's nephew, Lord Dacre, in 17 May, a quarrel broke out between himself and Norfolk, who claimed the Dacre lands for the heirs general, the dead boy's sisters, whom he had betrothed to his own sons, while their uncle

[60] *Ib.* ii. no. 941.

[61] July 1568; *Cal. Spanish S. P., 1568-79*, p. 58.

[63] S. P. Dom. Eliz. xlvii. 36.

[64] Sharpe, *op. cit.* p. 193-4.

[65] *Cal. Sc. P.* ii. nos. 543, 558-9, 931; *Hatfield Cal.* i. nos. 1218, 1231; *Venetian Cal.* vii. no. 449.

[66] La Mothe Fénélon, *op. cit.* i. pp. 329 *ff.*

[67] *Cal. Sc. P.* ii. nos. 1049, 1058.

claimed them for himself as the heir male. Cecil at once seized the opportunity of winning over the Duke,[68] and a special commission decided in favour of the heirs general (19 July).[69] It was not until Elizabeth explicitly forbade his marriage with Mary (Sept.) that Norfolk realised the mistake he had made,[70] and then it was too late.

To trace the causes and course of the rising of 1569 is in no way germane to the present inquiry.[71] For although the leaders, the Earls of Northumberland and Westmorland, were members of the Council in the North, and the Lord President almost certainly knew more of the antecedent plotting than he ought to have done, the Council as a whole took no such part in it as it had done in the Pilgrimage of Grace. The consequences of the rising did, however, affect the Council in several ways, and therefore they call for more attention.

Most of the leaders saved their lives by flight, and the only one to perish on the scaffold was the Earl of Northumberland, sold to the English government by the Regent Marr in 1572. Of their poorer followers, nearly 800 were executed by martial law during the first fortnight of January 1570. The rest saved their lives by composition, until a free pardon was extended to them (19 Feb.); but most of them were rendered destitute, and along with the disbanded retainers and servants of the Earls and gentlemen, they wandered about the country begging until a whipping campaign was started against them by the Vagrancy Act of 1572. The gentlemen and yeomen who fell into the hands of the Lord Lieutenant were reserved for trial before the Council in the North in order that the Queen might take their lands. Half-a-dozen were executed, two at London, four at York; but the rest were pardoned on composition. By composition too, many were allowed to retain their

[68] They were reconciled early in June; *Hatfield Cal.* i. no. 1307.

[69] *Cal. S. P. Dom. Add., 1566-79*, p. 259.

[70] S. P. Dom Eliz. lxxxiii. no. 11; lix. no. 4; Haynes, p. 527-8.

[71] They have been sketched by the present writer in "The Rebellion of the Earls, 1569"; Trans. R. Hist. Soc. 1906, pp. 174 ff.

lands ; but those who had fled with the Earls were attainted by parliament, and their lands forfeited to the Crown.[72]

The forfeitures did not include either the Percy or the Dacre lands. The former were secured to Northumberland's brother and heir, Sir Henry Percy, by patent as well as by the Queen's promise, so Elizabeth had to content herself with keeping the new Earl virtually a prisoner at court ;[74] the latter belonged to the co-heiresses and their husbands, Norfolk's sons, the decree awarding them to the heirs general not having been reversed. It even seemed for a time that the Neville lands also would escape Elizabeth ; for they lay in Durham where the Bishop claimed the rebels' lands in virtue of his *iura regalia*, and the law officers of the Crown had to advise the Queen that his claim was good in law. Parliament, however, prejudged the question, and 'for this time' gave the forfeitures in the Bishopric to the Queen 'since she had spent great mass of treasure in the repressing of the rebels.[75]

The parliament which passed these acts had already enacted the laws forming the nucleus of the Elizabethan penal code against Catholics. The end of the rebellion had been marked by the strict enforcement of the laws touching religion, and many of the moderate Catholics who had not joined the Earls had been so disheartened by the Queen's proceedings that they had gone into exile, leaving their estates to the care of trustees who transmitted the revenues to them. This was stopped by an act against Fugitives over the Sea who were to return within six months or lose the profit of their lands during life and forfeit all goods to the Queen.[77] At the same time it was made treason to attempt the Queen's life, levy war, deny her title, claim her crown, or deny the right and power of parliament to limit the succession ; *Praemunire* was re-enacted and extended to

[72] Sharpe, pp. 127-44, 263-74, 333-5.

[74] Pat. 3 & 4 Ph. & M. ; *Hatfield Cal.* i. no. 1406 ; Sharpe, p. 356.

[75] Dyer, *Rep.* p. 288-9 ; 13 Eliz. c. 16; *Cal. S. P. Dom. Add. 1566-79*, p. 254.

[77] 13 Eliz. c. 3.

cover the mere possession of papal 'things'; and it was made treason to give or receive either absolution from oaths or reconciliation with Rome. In the following year the Clergy Act compelled all priests and clergy to subscribe to the Articles agreed on in Convocation in 1562, and deprived all who maintained doctrines contrary to them.[78]

With the passing of these acts the time had come to change the President of the Council which must enforce them beyond the Trent. The downfall of the northern Earls meant the downfall of their whole order. It was during the brief ascendancy of the old nobility that the Earl of Sussex had been made Lord President of the Council in the North, and their fall involved his. A pretext for removing him was not easy to find; for whether or no his friendship for Norfolk and his hatred for 'the Gipsy', Leicester,[79] had led him to give the Duke assurances of support to the uttermost, it is certain that it was only the energetic action taken by the Council under his direction that saved the situation when the rebellion began. Still, there was hope that so proud a man might be driven by slights into resigning his office. So, as soon as the Earl of Warwick and Lord Clinton arrived at York with the southern army, they put such open slight on the Lieutenant-general of the North that Sadler, Hunsdon and Gargrave all protested.[80] Sussex himself wrote that Warwick and Clinton seemed determined to pick a quarrel, adding, 'If I weighed not the quiet of my good Queen more than any other matter, I would have stopped them from crowing on my dunghill or carrying of one halfpenny out of my rule'.[81] Yet a little later, he wrote again, 'I was first a Lieutenant; I was after little better than a marshal; I had then nothing left to me but to direct hanging matters (in the meantime all was disposed that was within my

[78] 13 Eliz. cc. 1, 2, 12.

[79] When dying, Sussex warned his friends: "Beware of the Gipsy, he will be too hard for you all; you know not the Beast as well as I do"; Dugdale, *Bar. Angl.* ii. p. 287.

[80] *Cal. S. P. Dom. Add. 1566-79*, pp. 179, 194-5, 200.

[81] Sharpe, p. 152.

commission), and now I am offered to be made a sheriff's bailiff to deliver over possessions. Blame me not, good Mr. Secretary, though my pen utter somewhat of that swell in my stomach, for I see I am kept but for a broom, and when I have done my office to be thrown out of the door. I am the first nobleman that hath been thus used. True service deserves honour and credit, and not reproach and open defaming; but, seeing the one is ever delivered to me instead of the other, I must leave to serve, or lose my honour; which, being continued so long in my house, I would be loth should take blemish from me .... and therefore, seeing I shall be still a chameleon, and yield no other shew than as it shall please others to give the colour, I will content myself with a private life'.[82] This was just what Mr. Secretary Cecil wanted; but there was still some sweeping for the broom to do, and it was not till after he had presided over the trials of the rebels at York, Durham and Carlisle,[83] and had led into Scotland two great raids that finally broke the strength of Mary's party there,[84] that Sussex was allowed to retire from the North, leaving Gargrave to rule as Vice-president.[85] Yet the time had not quite come to appoint his successor, so a suggestion made in October 1570[86] that a new President should be appointed came to nothing, and Gargrave continued to rule the North till the executions of the Duke of Norfolk and the Earl of Northumberland in 1572 proclaimed the final triumph of the 'new men' over the old nobility. There was no longer any reason to hesitate, so in August 1572 the Queen's cousin, the Earl of Huntingdon, became Lord President of the North.[87]

[82] Lodge, ii. p. 499-500. [83] Coram Rege Roll, no. 1233.

[84] One into Tweeddale and Teviotdale in April, 1570, the other into Liddesdale in August; *Cal. Sc. P.* iii. nos. 270, 436.

[85] From 31 Oct. 1570 all the letters from the North now in the Record Office were signed by Gargrave, and in the list of attendances (Harl. 1088) Gargrave attends all meetings from 20 Feb. 1570 onwards as Vice-president, whereas Sussex's name never appears.

[86] *Cal. S. P. Dom. Add. 1566-79*, p. 195. [87] *Ib.* pp. 322, 424.

CHAPTER IV.

The Presidencies of Henry, Earl of Huntingdon, and Thomas, Lord Burghley.

No greater contrast can well be imagined than that between Henry Hastings, Earl of Huntingdon, and the self-seeking priest and the brilliant statesman, soldier and diplomatist, who were his immediate predecessors in the Presidency of the North. Conscientious, hardworking, formal, unimaginative, although a great noble he was nevertheless one of the group of officials who looked to Sir William Cecil as their leader;[1] and his appointment marked the Secretary's final triumph over his opponents in the Privy Council whose temporary ascendancy had secured the Presidency of the North for Sussex in 1568. A precise Puritan, he was a wholehearted supporter of Elizabeth's policy in church and state. In return, he enjoyed the confidence of his royal cousin and her minister as the more able Sussex had never done, and received their unhesitating support from the time of his appointment in 1572 to his death in December 1595. Nor was the Earl without the respect of the people. Narrow, even intolerant, in religion as he was, leaping for joy when the letters were found which were to send Henry Walpole to torture and death,[2] acquiescing in the sentence which condemned a woman accused of harbouring priests to be pressed to death,[3] ordering the body of another who had died in

[1] In Sept. 1573 Cecil's enemies were attacking him for having appointed Huntingdon; Harl. 6991. no. 30.

[2] S. P. Dom. Eliz. ccxlvii. no. 21.

[3] Mrs. Margaret Clitheroe (née Middleton), pressed to death at York, 26 March 1586; Morris, *Troubles of Our Catholic Forefathers*, 3rd. series p. 430 ff.

the prison on Ousebridge to be brought out and laid openly on the bridge for a all to gaze at,[4] there must, nevertheless, have been something not altogether unlovable about the man; for when he died, his servants, although unpaid, kept watch over his dead body for four months while his sovereign and his heir were squabbling as to who should pay his funeral expenses.[5] His Puritanism made him an upright, incorruptible judge, and if the men who came before him could not hope for mercy, they knew that all that strictest justice could give them would be theirs. Under his rule a tradition that even-handed justice should be dealt to rich and poor alike was firmly established, and charges of unfairness such as had been brought against the Council in the days of Holgate and Young, became a thing of the past.

The change in the Presidency was accompanied by certain changes in the Council itself. The Earl of Northumberland had lately been beheaded at York, the Earl of Westmorland was in exile, and the Earl of Cumberland had died in 1570, leaving his heir a minor; they were now replaced by the Earl of Rutland and the Lords Darcy and Ogle.[6] Sir Henry Percy, having ceased to be Constable of Norham and Tynemouth, had ceased to be a member of the Council in 1570;[7] and William Tankard was now removed from the Council on the ground that he was 'grown into great age, and thereby not able nor meet to attend as he had done in that commission'.[8] Tankard's place as a Councillor learned in the law was taken by Ralph Rokeby the elder,

[4] Mrs. Foster, imprisoned for recusancy, who died in 1586; *Gentleman's Magazine*, 1840, p. 465, 'Death of Mrs. Foster, a recusant, at York. An Account in MS of Syon Community of Bridgetine Nuns removed from Isleworth to Lisbon, 1594.'

[5] He died 14 Dec. 1595 (Lans. 79. no. 40), and was buried 29 April 1596 (ib. 82. no. 25); cf.ib. nos. 80, 82 passim, and *Hutton's Correspondence*, ed. Surtees, p. 105.

[6] Titus. F. iii. 138.

[7] Harl. 1088.

[8] Titus. F. iii. 138.

Justice of Munster,[9] but Percy's was not filled by his successor at Norham. As a matter of fact, the character of the Council was now undergoing a change in response to the change in its duties. As it was now virtually the Court of High Commission for the Province of York, the ecclesiastical element in it had already been strengthened by the admission of the Dean of York in November 1568[10] and the Bishop of Carlisle in December 1570.[11] Now Grindal, newly appointed Archbishop of York, was admitted as a matter of course; and ten years later, the Archbishop of York, the Bishops of Durham and Carlisle, and the Deans of York and Durham for the time being became *ex officio* members of the northern Council.[12] At the same time the official element, apart from the learned Councillors and the Secretary, was lessened. The Wardens of the Marches, the Governor, Marshall and Treasurer of Berwick continued to be members as of course, but it was no longer possible to say of the other members that they all held some office under the Crown; instead, it became the practice to include in the Council at least one of the principal gentlemen from each Riding and shire named in the commission,

[9] Ib.; Whitaker, *Richmondshire*, i.p. 158 ff.; Thoresby, *Ducatus Leodensis*, p. 253-4. Pilkington had suggested in May, 1566 that he should be given the place left vacant by Estoft's death (*Cal. S. P. Dom. Add. 1547-65*, p. 511, a letter that should be dated 1566 and not 1561, as appears from Harl. 1088. f. 22. which shows that Estoft attended the Council in Feb.-March, 1566 but not in June 1566). At Young's instance, however, he was passed over in favour of Tankard (Harl. 1088. f. 22; S. P. Dom. Add. Eliz. xiv. no. 34). He was afterwards offered the Lord Chancellorship of Ireland, and when he refused it, was made a Master of Requests and Master of St. Katherine's (Whitaker, *ubi cit.*). He was surnamed the elder to distinguish him from his cousin and namesake, the younger son of the Ralph Rokeby who was made a member of the Council in the North in 1556 as a reward for his valour in the defence of London against Wyat (*ib.*). Ralph Rokeby the younger was made Deputy-secretary to the Council in the North in 1587 (*ib.*; Harl. 1088).

[10] Titus. F. iii. 147.

[11] Harl. 1088.

[12] Calig. C. iii. 583.

who was chosen because of his local influence and not because he was steward of a royal honor or constable of a royal castle.[13] This was a natural consequence of the changes that had replaced the old Catholic landowners by new men of Protestant sympathies who, owing much, if not all, to the Crown, became as Justices of the Peace its trusted allies in maintaining 'the quiet and good governance of the people of the North parts of the realm'. By the admission of one or more of the leading members of each of the northern commissions of the peace to the Council in the North, not only was the Council kept in close touch with local affairs but local interests being as well represented in it as those of the Crown, there was less room for jealousy of the Council as the agent of royal authority in the North.

It was well that it should be so, since it fell to the Council to deal with breaches of the penal laws that were being passed in quick succession ; for, while some of them touched religion, more were social and economic and closely affected the interests of the governing classes, who as Justices of the Peace had to enforce them. Contrary to what might have been expected, the enforcing of the recusancy laws gave the Council little trouble. For some years after the rebellion of the Earls there was very little recusancy in the North, and Huntingdon even wrote in 1573 that 'a few pensions would in time break the neck of all popish practices'.[14] Then, however, seminary priests from Douai began to come over, and three years later he had to confess that 'the declination in matters of Religion is very great, and the obstinacy of many doth shrewdly increase .... Yea, I hear some say, that they were not worse to be liked a little before the last rebellion than at

[13] E. g. when Vaughan died in 1577, Huntingdon asked that Sir William Fairfax, Sir William Mallory, Sir Thomas Boynton and Francis Wortley, afterwards Recorder of Doncaster (11 July, 1579 ; *Records of Doncaster*, iii. p. 1), should be added to the Council (*Cal. S. P. Dom. Add. 1566-79*, p. 515-6). His wish was granted (Harl. 1088).

[14] Huntingdon to Cecil, 5 July, 1573 ; Lans. 17. f. 31.

this present'.[15] Soon the castles at York and Hull and the prison on Ousebridge were full of recusants, so that many died 'through the very infection of the prison'.[16] Nevertheless, there were no executions for religion until the activity of the Jesuits in Scotland and Ireland and the mission of Campion and Parsons to England frightened parliament into passing an 'act to retain the Queen's Majesty's subjects in their due obedience', whereby reconciliation with Rome was made treason.[17] The first execution at York was that of Richard Kirkman in August 1582,[18] and from this time the number of executions, though never large, rose steadily till 1586, the year of Babington's plot, when two priests and two gentlemen were executed and Margaret Clitheroe was pressed to death at the Tolbooth for refusing to plead when arraigned before the Council for harbouring a priest.[19] Huntingdon, however, seems to have been fearful 'lest too much vigourness harden the hearts of some that by fair means might be mollified',[20] and he would not bring reconcilers, reconciled, or receivers of seminaries and such-like to trial or execution unless there were a seminary taken,[21] and the number of executions for religion at York declined until they ceased in 1592. Their renewal in the following year was due to political rather than to religious considerations, and is better dealt with in connection with the situation at the time of Huntingdon's death.[22]

The enforcing of the social and economic legislation of

[15] Ditto, 9 Sept. 1576; Harl. 6992. no. 26; *cf.* S. P. Dom. Add. Eliz. xxvii. no. 28.

[16] *Yorks. Archae. Jour.* x. p. 88; *Rep. Hist. MSS. Comm.* x. pt. 5. p. 117; Challoner, *Missionary Priests*, p. 26-7.

[17] 23 Eliz. c. 1.

[18] Challoner, *op. cit.* p. 77.

[19] Morris, *op. cit.* p. 430 ff.

[20] S. P. Dom. Eliz. xlviii. no. 41.

[21] Sir Edward Stanhope to his brother Sir John Stanhope, 2 Dec. 1596; Addit. MSS. 30, 262. E. 2.

[22] Pp. 226-7, 232-3.

the Tudors gave the Council in the North much more trouble than their laws touching religion. When viewed as a whole that legislation is seen to be but the application to the nation of ideas which had been implicit in the local organisation of earlier times.[23] Being rooted in the past, it was accepted by parliament without question or misgiving; but in practice it was quickly found that the needs of a nation were not identical with those of a manor or a gild, and that the new laws, salutary though they might be, laid on the nation a heavy burden of responsibility and taxation which fell chiefly on the very class from which the Justices of the Peace, who had to enforce them, were drawn. The statutes of 1557 for the Having of Horse, Armour and Weapon and for the Taking of Musters, for instance, were but up-to-date editions of the Assize of Arms and the Statute of Winchester; the statutes for the Repair of Roads, Highways and Bridges (1563, 1576) were really only reminders of a service due from the land long before the Norman Conquest; and the statutes concerning Artificers and Labourers (1563), Forestallers and Regrators (1563), Frauds in Clothmaking (1559, 1593), and Tillage (1563, 1571, 1597) were little more than authoritative summaries by the High Court of Parliament of regulations hitherto enforced by the manorial and municipal courts, which were now imposed on the whole country and entrusted to the Justices of the Peace for execution:[24] all were records rather than enactments. Even the statutes for the Relief of the Poor (1563, 1572, 1576, 1597, 1601), based as they were on that of 1536, simply insisted on the fulfilling of the old obligation of each parish to aid its own poor under regulations already tested by the gilds and corporations.[25] All these statutes however, imposed fresh

[23] Meredith, *Economic History of England*, p. 403.

[24] *Ib.* pp. 102-5; Ashley, *Econ. Hist.* i. pt. c. chs. 2, 3, 5; Cunningham, *Eng. Ind. & Com.* ii. pt. 1. §§. 167-9, 173.

[25] Ashley, *op. cit.* ch. 5; Cunningham, *op. cit.* ii. §. 169. The acts of 1576 and 1597 practically extended to the country generally the 'custom' of London; *ib.* ii. p. 48.

restraints or burdens on owners of property, and involved what would have been in the aggregate a crushing burden of taxation had they been strictly enforced. The frequency with which the more important measures had to be re-enacted, shews, however, that they were generally felt to be ineffectual; and the repeated proclamations, commandments, and exhortations of the Privy Council to the Justices of Peace are proof enough of the passive opposition encountered by the government in its attempt to regulate the social and economic development of the nation.

The Council in the North, therefore found that much of its work lay in seeing that the local magistrates faithfully discharged the duties laid on them. Huntingdon,[26] like his predecessors, made it his first business as Lord President to draw up Articles for the Justices of the Peace, exhorting them to execute the laws and more particularly those to which his own Instructions called attention, touching retaining, extortion, recusancy, unlawful enclosures, the decay of houses and tillage, vagabonds, and relief of the poor; and from time to time he issued proclamations requiring the local authorities to execute the laws, and even, when necessary, commissions enabling them to do so. In this respect the year 1577 was a particularly busy one, and the Council, besides commissions for musters and for piracies,[27] received from the Lords of the Council letters[28] directing it to take action concerning (a) clothiers and buyers of wool whose licences for buying and selling wool had just been restrained by the Queen at the petition of the Merchants of the Staple;[29] (b) the decay of archery; (c) the increase of inns, alehouses, taverns, and victualling houses.[30] It directed seven separate letters to the Mayor and Aldermen of York alone requiring them (1) to bind

[26] Dec. 1572; *Cal. S. P. Dom. Add. 1566-79*, p. 64-5.

[27] *Ib.* pp. 511, 514-5, 523-4; Lans, 146. f. 20.

[28] *Cal. S. P. Dom. Add. 1566-79*, p. 616.

[29] *Cal. S. P. Dom. 1547-80*, p. 547.

[30] *Corp. of Kendal MSS*, p. 301; S. P Dom. Eliz. cxvii. no. 57.

over the innholders, victuallers, table-keepers, and butchers to observe the statute forbidding the eating of flesh in Lent or on Wednesdays, Fridays, or Saturdays (15 Feb.); (2) to enforce the statute against unlawful games (20 March) (3) to give order that men and arms should be ready for the musters in July (27 March); (4) to execute the laws for the relief of the poor and for highways (26 April); (5) 'to report on the furniture of harquebusiers' (14 June); (6) to certify the number and quality of poor, and the amount of the collection for them (17 July); and (7) to stop engrossing, regrating and forestalling, and to prevent riots and unlawful assemblies (20 Dec.).[31]

The letter of 17 July touching the relief of the poor is specially interesting, partly because it was written on Huntingdon's own initiative, partly because it throws light on the state of York at that time. The Lord President begins by saying that he and the Archbishop of York have been considering the great number of poor in York, very pitiful and a scandal to the Corporation; this they want to remedy, so they ask the Mayor to certify them of the numbers and quality of the poor, etc. before the 27th. With this information before them, they then opened a subscription list for annual contributions for the relief of the poor in York, which the Lord President headed with the sum of £13. 6s. 8d., the Archbishop subscribing £20 and other members of the Council sums amounting to £15 11s. 6d.; but there was a good deal of difficulty in persuading others to follow their example.[32] A few years later, after a bad harvest, Huntingdon wrote in like fashion to the Mayor of Hull (17 Dec. 1586), saying that he had heard that the poor in Hull were distressed for want of corn; he therefore directed the Mayor and Aldermen to search for corn in the neighbourhood, and to deal with the merchants to sell it at a reasonable price to the poor; if any refused to sell, the Mayor must certify the Lord President.[33]

[31] Y. H. B. xxvii. ff. 10, 16b, 17, 26, 34, 40, 69b.

[32] Ib. xxvii. ff. 60b, 66b. [33] Hull Corporation Records.

It was not only the care of the poor that was left to the Lord President and Council. When Rottray Bridge in Sedbergh fell during the winter of 1584-5, the Council in the North appointed commissioners to view it and take order for its rebuilding; but no action was taken, and the commission had to be renewed in May 1586. The excuse given by one of the Justices of the Peace who should have met the first commissioners is eloquent as to the cause of the delay. He wrote that he could not meet the commissioners from Yorkshire for he had a horse to run in the race at Langwathby on the day fixed for the meeting concerning Rottray Bridge. As a matter of fact, measures for the rebuilding had not been taken even in September 1586 when the Council ordered the members of the second commission to make certificate of their proceedings therein before 20 May 1587.[34]

Just two years later, the Council in the North, in trying to make York and the other clothing towns bear their fair share of public burdens, found itself involved in the great ship-money controversy. So far as the North is concerned, this controversy began in November 1547, when the Earl of Shrewsbury as Lord Lieutenant wrote to York asking it to fit out vessels for the defence of its trade, as the West Country was keeping fourteen or sixteen ships at the war and Rye had four or five, while Norfolk and Suffolk protected their own herring-boats. The Mayor replied that York had no ships but lighters and no men to send, otherwise they would gladly do so. No more passed at that time; but in January 1558, just after the surrender of Calais (7 Jan.), Hull asked York as a principal member of the port to help in furnishing the ship demanded from the former for keeping the narrow seas. The Mayor and Aldermen refused on the ground that they dare not levy men without the direct command of the king and queen, and then denied that York was a member of the port or ever had been. They also declared that the Queen's letters

[34] *Fleming MSS at Rydal Hall*, pp. 11-12.

were no warrant to Hull to write to them, and even resolved to send two of the Aldermen to lay a complaint against Hull before the Lords of the Council; but whether they did so, or with what result, does not appear.[35] So far, the dispute was of local importance only; but during the next thirty years sea-warfare was completely revolutionised, and when war with Spain broke out the provision of ships and men for the fighting-line had become so costly that the country as a whole had to be called on to contribute to the cost. During the privateering boom of 1580-5 plenty of armed ships had been prepared; but the political crisis of 1587-8 came upon England when still in the throes of an economic one, and the Queen was so short of money that she could not provision the ships at her disposal nor supply them with powder.[36] The sea-ports were therefore called upon, and in April 1588 Hull was ordered to provide two ships and pinnaces, manned and victualled for two months. When Hull protested that it was too poor to pay the whole sum, the Privy Council wrote to the Lord President to urge York and other places using Hull as their port to contribute to the cost. With one accord the merchants of York, Scarborough and the other towns and ports of the country refused to help; so Huntingdon was directed (21 Sept. 1588) to bind over those who did so to answer their contempt before the Privy Council. Scarborough and the ports then gave in; but York held out until the Privy Council, having heard both parties, decided (27 Jan. 1589) that since York's trade was at least thrice that of Hull and it had more people and was richer, the city should pay Hull £600 out of the whole sum of £1015.[37]

As time went on, the Council in the North found its task becoming ever more difficult. With the outbreak of war with Spain there began a long series of bad years in which the wealth gathered during the long peace since 1570 was

[35] Y. H. B. xvii. f. 68; xxii. ff. 102, 104.

[36] Scott, *Joint Stock Companies to 1720*, i. p. 91-2.

[37] *A. P. C.* x. pp. 9, 36, 282.

entirely lost; for trade disappeared when the Spanish reprisals for the filibustering voyages of Drake and his fellows began. As the North was naturally poor and had been well-nigh ruined through the rising of 1569, it had been slow to gain during the good years and was quick to lose when the bad ones began. The cloth-trade with Germany as well as with the Netherlands being interrupted, many merchants were ruined and the towns swarmed with idle poor. While the price of wool fell with the decline of trade, that of corn rose owing to a succession of bad harvests which culminated in a great dearth lasting from 1595 to 1597.[38] Famine and plague followed; and distress giving rise to discontent and unrest, rioting became frequent.[39] Tenant-right cases before Chancery as well as before the Council in the North became more numerous,[40] enclosure riots more frequent, and the commons in the towns more restless. The democratic movement of earlier years revived, and in several towns determined, even violent, efforts were made to win for the people some share in the government. At Doncaster,[41] for instance, the freemen claimed that the Mayor, should be elected by them, not by the Aldermen and Twenty-four; two Mayors were elected, and the peace was repeatedly disturbed by riots. The Council in the North tried in vain to effect a settlement, and at last the Privy Council had to intervene. From Newcastle[42] came serious complaints of misgovernment by the town-council, which engaged the attention of the Privy Council as well as of the Council

[38] Scott, *op. cit.* i. pp. 88-104, 465.

[39] Very dark pictures of the state of Yorkshire in 1587-9 were drawn by a West Riding correspondent of Cecil's, James Rither (Lans. 54. *ff.* 141, 154 *ff.* and 119. no. 8); but they do not seem to be darker than the truth.

[40] *Chancery Cases in the Reign of Queen Elizabeth* (Rec. Com.), passim; Lans. 86. no. 17; *County Hist. of Northumberland,* viii. pp. 208 *ff.*; *A.P.C.* xxv. p. 205.

[41] Oct. 1590-July 1591; *Records of Doncaster,* iv. passim; *A.P.C.* xx. pp. 19, 20, 86; xxi. pp. 128, 258, 261.

[42] 1592-99; *Hatfield Cal.* iv. p.208; *ib.* vi. p. 447; S. P. Dom. Eliz. cclxiv. no. 117; ib. cclxviii. no. 57; *A.P.C.* xxv-xxix, passim.

in the North for some years; and the contest was hardly over before a new one began between the Newcastle Hostmen's Company and the burgesses of the town.[43] At Beverley, too, difficulties arose over the purchase of the stewardship by the townsmen;[44] and at Durham the demands for self-government became so insistent that the Bishop had to grant a charter vesting the government in a mayor and aldermen as the only way of preventing the crown from doing so in the interests of order.[45]

The government did what it could to relieve the situation by re-enacting in an improved form the statutes for the encouragement of tillage and for the relief of the poor, adding to them one for the relief of wounded soldiers and sailors.[46] But the effectiveness of the laws depended on their execution; and as the government became more insistent that the Justices of the Peace should do their duty, these became more impatient of the burdens laid on them and more openly hostile to the control of the local authorities by the central executive. In the circumstances, resistance to the Council in the North as the representative of the Crown in the northern shires was only to be expected; and towards the end of Huntingdon's Presidency it made itself unmistakeably felt. His death was the signal for a general attack on the court over which he had presided so long; and his body was still unburied when the Council in the North found itself in the throes of a crisis from which it emerged shorn of much of its prestige and nearly all of its governmental authority.

It was in the West Riding that the revolt against the Council's authority began. Nowhere had the bad years brought more misery than here where there was little arable

[43] In 1603; Dendy, *Newcastle Hostmen's Company*, pp. 19-26. This case, like the other, was settled by the Council in the North, whose decision was embodied in a royal charter in the following year.

[44] The matter came before the Council in the North in 1594; Harl. 368. no. 5.

[45] Sykes, *Local Records*, i. p. 83.

[46] 35 Eliz. c. 4.

land and the well-being of all classes depended upon wool, and nowhere was there more impatience with the Council's rule. In particular, the sheep-farmers and the clothiers were aggrieved because the Council in the North, under pressure from above, had been enforcing more strictly the statutes against regrators and wool-gatherers, who were said to have too much liberty in buying up the wool and increasing its price, and against frauds in cloth-making, especially flocking and stretching the cloth, practices to which the Yorkshire clothiers were too much given.[47] So great had the evil become that in 1593 a special act was passed against the stretching of cloths made north of the Trent.[48] This the Justices of the Peace in Yorkshire, Westmorland and Lancashire simply refused to enforce, and the odium of executing it fell on the Council in the North.[49] The Council's procedure gave it a certain measure of success, though not enough to prevent the French king from ordering the confiscation of English cloth which had been stretched.[50] The only method of escape that suggested itself to those aggrieved by the Council's vigilance was to deny its jurisdiction. So under the leadership of Sir John Savile,[51] serjeant-at-law, whose family was closely connected with the clothing interest in the West Riding and who as a common lawyer had his own grievance against the Council as a too successful rival of the courts at Westminster, the West Riding Justices attacked, first the Council's authority to grant *supersedeas*, and then its authority to execute the penal statutes except by the common law method of inquest and verdict, a method which would certainly have enabled nearly every clothier to escape punishment for deceit in manufacture. Factious and interested as the attack really was, the Justices found allies in

[47] *A.P.C.* xix. pp. 168-9 ; xx. p. 163.
[48] 35 Eliz. c. 10.
[49] *A.P.C.* xxx. p. 602 *ff.* ; 24 Aug. 1600 ; xxxi. p. 111, 2 Jan. 1601.
[50] *Ib.* xxx. p. 481, 8 July, 1600.
[51] Hunter, *The Savile Family.*

the courts at Westminster, and soon the Council found itself engaged in a life and death struggle in which was involved nothing less than the validity of its special commission and the whole of the prerogative power of the Crown in matters of justice.[52]

Just at this moment the ship-money controversy was revived by an order of the Privy Council to York, Wakefield, Halifax and Leeds to help Hull to fit out a ship for the expedition to Cadiz, Hull being their port for cloth and merchandise. York delayed obedience until the Council in the North was directed to take bonds of those who refused to pay ship-money; but the West Riding towns flatly refused on the ground that they were not on the Humber and that York's help made theirs unnecessary. The Lord Admiral was directed to find out whether the clothing towns ought to help; but before he had time to report, Serjeant Savile and the West Riding Justices were informed that the Council would not require these towns to do so. Hull and York protested; and in September 1596 Wakefield, Halifax, Leeds, Scarborough, Bridlington and Grimsby were ordered to help York and Hull to pay the £1400 required for the wages of the men on the ship at Cadiz. They all refused, and the Council in the North was directed to examine the case and take order as seemed best. As the Council was now in the heat of its struggle with the Justices of the Peace and the Courts at Westminster, it is not surprising that nothing had been done even in October 1597 when the towns were again ordered to pay Hull. Shortly afterwards the ports gave in; but the clothing towns held out till April 1598 when the Privy Council sent for the West Riding Justices, who were pardoned only on condition that they would collect the money at once from 'the clothiers and chapmen as well as the Wealthier sort'. The Council in the North was directed to see that they did so; and Savile was rewarded for his submission by his elevation to the Bench as a Baron of the Exchequer and by his appoint-

[52] See Part III, Chaps. 5, 6.

ment to the Northern circuit.[53] A few months later, the struggle began again for; in November 1598 some Dunkirkers appeared on the coast, and the Council in the North was directed to see that watch was kept and that Hull set forth ships. This having been done, the Council was told to urge the East and North Ridings to contribute to the cost, as they had been saved from raids by Hull's action. York at once refused, not only to collect the ship-money, but even to appear before the Council in the North; and it was not until bond was take of them for their appearance before the Privy Council that they submitted.[54]

For the time the Council in the North had won; but the struggle was certain to be renewed, if not over the payment of ship-money, then over the enforcing of some law that touched too nearly the interests of the governing classes. Participation in government had created a desire for self-government which became a demand as soon as national unity had been attained and national independence had been secured. The strong personal government of the Tudors had become unnecessary, and the years after the defeat of the Armada were marked by the growth of strife between the monarchy and the nation; parliament was coming into ever sharper conflict with the Crown; and on all sides the royal prerogative was being assailed. In local government the divergence of interests was more often between the gentry and the nation than between the nation and the crown; but the results were the same, the Justices of the Peace everywhere resisting the central government, passively by leaving unpopular statutes unenforced, actively by refusing to obey the orders of the Council. It was, in fact, already a question how long the government could

[53] *A.P.C.* xxv. pp. 210, 241, 316, 325; xxvi. pp. 150-1; xxviii. pp. 66, 400-1, 403.

[54] *Ib.* xxix. pp. 402-3, 582; *Hatfield Cal.* ix. 2 Jan. 1599, 26 April 1599. Their reluctance may have been overcome by the visit of some Dunkirkers to the coast in May 1599, when they captured 12 English ships and ishing-boats.

retain the Council in the North as a law-court if it still sought to maintain its administrative authority.

Unfortunately, the Council was handicapped from the outset by becoming once more the prey of court factions striving for supremacy in the state. These had their origin in the personal rivalry of Sir Robert Cecil, Lord Burghley's second son, and the Earl of Essex, and no political principle was involved in the struggle. Yet it was inevitable that in course of time a certain difference of policy should appear, and that the several elements of discord in the nation should range themselves under one or other of the rival leaders. Cecil, who had been admitted as Secretary of State in August 1591, had no courtly graces to match those of his brilliant rival, but he had all the advantage that comes from possession. As his father's son he was pledged to uphold the Anglican settlement and uniformity in religion, and to follow a cautious foreign policy having peace with Spain as its end, a policy that won the approval both of the old nobility and of the mercantile classes. Essex, who had succeeded his step-father, the Earl of Leicester, as the leader of the advanced reformers, adopted an adventurous foreign policy of naval warfare with colonial empire as its goal and sought the support of the extremists in religion by advocating toleration of Puritan and Papist alike.[55] The rivalry of the factions affected every part of national policy and every office of state; and it was inevitable that the control of the North, the stronghold of Catholicism, should become an important subject of intrigue.

It was in 1592 that the attention of the schemers was first focussed on the North. Ever since James VI of Scotland attained his majority, he had been drifting away from the English alliance, and there was some likelihood that the Scottish Catholics, who had been seeking since 1580 to persuade or compel him to become a Catholic,

[55] Pollard, *Pol. Hist. Eng.* pp. 411-2, 470-1; Hume, *Treason and Plot*, passim.

might yet gain their end. Should they do so, an invasion of England and a rising of the northern Catholics might reasonably be expected to follow. There was even some risk that Philip of Spain, now at open war with England, might yet give the aid for which the Scottish lords were always asking. Such an attack by a force crossing the Scottish Border had in fact been suggested by Mendoza in 1586;[56] and in anticipation of it the recusants had been disarmed.[57] Elizabeth had also cast about for means to get into her hands the Percy and Dacre lands; but Throgmorton's and Paget's plots failed to furnish sufficient pretext for attainting the Earl of Northumberland and the husbands of the Dacre coheiresses, the Earl of Arundel and Lord William Howard. Leicester therefore stirred up Francis Dacre, now the Queen's man,[58] to claim the Dacre lands as heir male to his father; but his title could not be proved for lack of the evidence given at York in 1566, Sussex having taken it out of the records at Norfolk's instance in 1569,[59] and Coke as counsel for the Howards easily got a verdict for them by proving the deed of entail a forgery.[60] Shortly afterwards, an inquiry as to the Queen's estate in the Dacre lands by the attainder of Leonard Dacre[61] warned Francis that he was but the tool of craftier men; so in September 1589 he fled to Scotland, where James promised that when he should be king of England he would restore to Dacre all that his brother had lost for the Queen his mother's cause, and would give him the title. Thereupon Dacre became active in James's cause, stirring up the Dacre

[56] *Spanish Cal.* iii, 24 Dec. 586.

[57] In 1585; the armour seized was sold to the trained hands in April 1588 (*A.P.C.* xvi. p. 38).

[58] Since 1582; *Cal. Border Papers*, i. no. 144. Leonard Dacre had died at Brussels in 1572; and Edward Dacre died before 1584 (Sharpe, p. 223).

[59] Lans. 54. f. 84; Harl. 6996. no. 55.

[60] 30 June, 1586; *Household Books etc.*, Appendix; Hobart, *Rep.* p. 109 ff. The King and Lord Hunsdon v. the Countess Dowager of Arundel and the Ld. Wm. Howard.

[61] March, 1589; S. P. Dom. Add. Eliz. xxxi. no. 11.

tenants, who had never ceased to look to his family as their rightful lords, and putting the Catholics, both English and Scottish, into touch with Essex through his spy-master, Anthony Bacon.[62]

Dacre's intrigues, which came to Cecil's knowledge in 1592,[63] gave new significance to the increasing recusancy of the North. So when parliament met in 1593, he magnified the danger from the Scottish intrigues with Spain and from the growing defection in religion to such good purpose that he obtained a large subsidy and a new set of penal laws extremists in religion, both Papist and Puritan.[64] Then Huntingdon, who had already been directed to make search for 'the principal recusants and seducers of the people',[65] was sent north to fortify the Borders ;[66] and the executions of recusants and seminaries began again.[67]

Among those taken were several men known or suspected to be agents of Dacre's,[68] and soon Cecil had matter enough to outlaw Dacre as guilty of imagining and compassing the death of the Queen and the invasion of the country.[69] Then, the long-lost depositions having been found at last by Ralph Rokeby, Secretary to the Council in the North, in the keeping of a servant of the Examiner of Witnesses,[70] Sir Thomas Egerton, Master of the Rolls, and Edward Coke, who had been made Attorney-general for the purpose, were sent north to secure the Dacre lands for the Crown at last.[71] But Cecil failed to implicate Essex in Dacre's

[62] Ib. no. 67 ; *Cal. Border Papers*, i. no. 652 ; Harl. 6998, f. 97 *ff* ; *Hatfield Cal.* viii. p. 129 ; S. P. Dom. Eliz. ccxlvi. no. 29 ; ib. cclii. no. 104.

[63] *Cal. Border Papers*, i. nos. 652, 664.

[64] 35 Eliz. cc. 1, 2.

[65] 13 Aug. 1592 ; S. P. Dom. Eliz. ccxlii. no. 105.

[66] July 1593 ; S. P. Dom. Add. Eliz. xxxii. nos. 81-3.

[67] Challoner, *op. cit.* p. 194-5 ; Sykes, *Local Records*, i. p. 81.

[68] John Boast, John Whitfield, John Ingram, and Henry Walpole.

[69] Harl. 6998. f. 97 *ff*.

[70] April 1594 ; Harl. 6996. no. 55.

[71] S. P. Dom. Add. Eliz. xxxiii. nos. 11, 23 ; S. P. Dom. Eliz. cclxix. no. 9 ; *Household Books etc.*, p. 408 ; Hobart, *Rep.* p. 109 *ff*.

schemes,[72] and he had to content himself with trying to break up by a ruthless persecution the Catholic party that had been working for James VI's succession ever since the execution of his mother in 1587.

Needless to say, Cecil was not allowed to carry put his policy without opposition. Hutton, who became Archbishop of York in December 1594, was on principle opposed to compulsion in religion,[73] as were his Dean and Chancellor; so recusants presented before them as Ecclesiastical Commissioners were usually allowed to go unpunished, unless they were suspected of plotting against the Queen.[74] Moreover, Essex, seeking to win the Catholics, used his influence over such members of the Council in the North as looked to him as their patron, to keep the penal laws from being too strictly enforced.[75] Hutton, for instance, was friendly to Essex;[76] and Edward Stanhope of Gray's Inn, who had been admitted to the Council in 1587 through Leicester's influence, was still attached to his step-son's party.[77]

[72] All the examinations of prisoners and witnesses at this time show how anxious the Cecils were to prove that Essex was involved in the plots they were unravelling.

[73] *Hutton's Correspondence*, p. 155; S. P. Dom. Eliz. xlviii. no. 41.

[74] Lans. 84. no. 104; cf. Instructions to Burghley, 3 Aug. 1599, S. P. Dom. Eliz. cclxxii. no. 7.

[75] In Sept. 1595 he obtained the release of Wright the Jesuit (Lans. 983. f. 57; *Cal. S. P. Dom. 1598-1601*, p. 216), who after his return to York busied himself reconciling many to Rome (Lans. 79. no. 44; *Hatfield Cal.* xii. p. 232).

[76] In May 1600 he wrote to Whitgift, 'It would comfort a very great number of her Majesty's best subjects if she would be pleased to stretch forth the golden sceptre to that noble gentleman now abiding the frowns of fortune, and to cause a sure and hearty reconciliation' (*Correspondence*, p. 153); the context shows that the 'noble gentleman' was the earl of Essex.

[77] Harl. 1088; Calig. C. iii. 584; *Hatfield Cal.* ix. 15 Jan., 9 Feb., 15 March 1599. The letter of 15 Jan. is decidedly interesting; for in it Stanhope writes to Essex: "Mr. R. Mansfield has let me know he has sent a man purposely to Mr. Thomas Percy". Why Mansfield sent a man is not stated; but he was a 'servant' of Essex as formerly of Huntingdon, and was then a captain in Ireland (*ib.* p. 398-9; S. P. Dom. Eliz. cclxxiii. no. 14), and Thomas Percy was afterwards engaged in the Gunpowder Plot.

Cecil therefore had to seize every chance of introducing into the Council men of his own party, and every new vacancy occasioned a new intrigue.

Cecil's first success was the appointment of Charles Hales, a member of a great legal family, as one of the learned Councillors in July just before Huntingdon was ordered to arrest the leading recusants.[78] Then in August 1595 he secured the appointment of John Ferne of the Inner Temple, a kinsman of his friend Lord Sheffield, as Secretary to the Council in succession to Ralph Rokeby the younger, who had died a few months earlier.[79] As Ferne had had a bitter contest with Stanhope for the Recordership of Doncaster in 1590 and 1592, in which he had been defeated,[80] he could be trusted to keep a watchful eye on Essex's friends, and on Stanhope in particular. As a matter of fact, it is from his letters to Cecil that we learn most of the intrigues of which the Council was now the centre.

This was by no means Cecil's only success in his efforts to gain control of the North. Huntingdon's visit to the Marches in 1593 revealed a startling state of affairs. Despite all legislation the decay of the Borders had gone on unchecked since 1568, many towns being 'laid waste for sheep and husbandry, and the people clean driven away',[81]

[78] Murdin, p. 799. That Hales was a Cecil nominee is inferred from the fact that his admission and Ferne's (who is known to have been of the Cecil faction) are the only ones noted by Lord Burghley in his notes on Elizabeth's reign. Hales was a descendant of Christopher Hales, Master of the Rolls in 1356 (Foss, v. p. 183; Hasted, *Kent*, iii. p. 716). There is in the Library at University College, London, a copy of the first edition of Crompton's *Jurisdiction de Cours*, bearing on the title-page Hales's signature and the date, Dec. 1594. At the section on Justices of Oier and Terminer are a few notes by Hales on the Council in the North. Other notes show that he was careful to keep abreast of the legal learning of the day.

[79] S. P. Dom. Eliz. cclii. no. 80; *Hatfield Cal.* ix. p. 228-9.

[80] *Records of Doncaster*, iv. pp. 13, 78.

[81] Browne to Walsingham, 1583; S. P. Dom. Add. Eliz. xxviii. No. 26. In Nov. 1593 it was stated in a report sent in to Burghley that in the East March alone 767 towns had decayed since 1568, 216 were no longer furnished for war, 39 had been converted to demesne, and 26 castles were in ruins, while in the Middle March 8 towns were decayed, 226 had been wasted by the Scots, 216 had been converted to demesne, and 8 castles were decayed;

and 'the March laws were out of use and the common laws contemned', partly through the power of the Wardens crossing the execution of justice, partly through private men protecting defaulters so that jurors refused to do their duty for fear of feud.[82] The blame for this state of affairs really lay with Huntingdon. He had the defects of his qualities, and like all officials was apt to follow custom and rule too closely; so, finding that it was generally held that 'in ordinary cases the Lord President had no jurisdiction in the Marches, that belonging to the Wardens', he seldom held a session at either Newcastle or Carlisle, and never interfered in any of the Wardenries.[83] Yet he must have known that under such a man as Sir John Forster, of whom 'no man, however he is oppressed, dare complain',[84] and even under Lord Scrope, 'an honourable, most courteous, and good gentleman ... but intolerable slow in doing justice',[85] the Borders would fall, as they did, into 'most sad case, for all kinds of government'.[86] Now, however, Forster was forced to resign his Wardenship of the Middle March to Cecil's friend Lord Eure (1 Sept. 1595),[87] and a special commission for Border causes was directed to the Council in the North who once more began to visit the Marches for the administration of justice.[88]

Huntingdon's long Presidency was now drawing to a close; and with his death on 14 December 1585[89] the

S. P. Dom. Add. Eliz. xxxii. no. 96. The decay of the strongholds is very striking; by 1627 all the chief castles were in ruins (*Camd. Misc.* iii, 'A Relation of Disorders committed against the Commonwealth'; pp. 10-15).

[82] *Halfield Cal.* vi. p. 48; *Cal. Border Papers*, ii. no. 171. In Dec. 1595 it was estimated that in Northumberland alone over 160 masters of families had been spoiled and slain in their own houses since 1568; *Halfield Cal.* v. p. 493.

[83] Calig. D. ii. 88; S. P. Dom. Add. Eliz. xxxii. no. 87. In Feb. 1593 he was roundly accused by the Queen of negligence in Border causes.

[84] Hunsdon to Cecil, April 1572; Sharpe, p. 26.

[85] Bishop Barnes to Cecil, 27 Oct. 1570; S. P. Dom. Eliz. lxxiv. no. 22

[86] Huntingdon to Burghley, 31 July 1592; Harl. 6995. no. 76.

[87] *Cal. Border Papers*, ii. no. 119.

[88] Titus. F. xiii. 301; *Halfield Cal.* v, vi, vii, passim.

[89] Lans. 79. no. 40.

struggle between Cecil and Essex for the control of the North asumed a new importance. At the moment, the influence of Essex, just about to start on his voyage to Cadiz, was strong enough to secure the rule of the North for Archbishop Hutton as Head of the Council in February 1596.[90] This was a serious check to the Cecils; but they were still strong enough to minimise their defeat by preventing the Archbishop from being given the title of Lord President. Thus, in theory at least, the office was still vacant[91] when Essex went to Ireland in April 1599 to take command against Tyrone. The fruitless campaign in which he wasted the summer months roused the queen's indignation against him; and Sir Robert Cecil seized the opportunity to obtain Hutton's dismissal, ostensibly on account of his great age and ill-health, really because of his 'overmuch toleration used to recusants';[92] and in August 1599 his own brother, Lord Burghley, was appointed Lord President of the Council in the North.[93]

This appointment was made by Cecil exclusively in his own interest.[94] He was well aware that Essex, who was now corresponding with James VI,[95] was in close touch with the northern Catholics and that as Elizabeth's long life drew to its close, the danger of a rising in the North to secure the succession of the King of Scots and toleration in religion became greater. It was known that the tenants of the baronies of Gilsland, Greystoke and Burgh, now in the Queen's hands, were dangerously affected to Francis Dacre, as were the body of the West March gentlemen and

[90] *Cal. Border Papers*, ii. no. 225; *Egerton Papers* (Camd. Soc.), p. 210.

[91] *Hatfield Cal.* vii. p. 492.

[92] *Ib.* ix. p. 317; *Hutton's Correspondence*, pp. 145, 147-8.

[93] His Instructions were drafted 3 Aug. 1599 (S. P. Dom. Eliz. cclxxii. no. 7; cf. Titus. F. iii. 130); his commission is dated 10 Aug. 1599 (Pat. 41 Eliz. p. 17).

[94] *Correspondence of James VI of Scotland with Sir Robert Cecil*, (Camd. Soc.), p. 83.

[95] Hume, *Treason and Plot*, pp. 361 ff. 394-5, 430-2; *Hatfield Cal.* ix—xi, passim.

their retainers ; that they had lately entered into a dangerous combination by oath and league to maintain the cause of the Scottish king, to whom they were ready to deliver Carlisle ; and that in support of the scheme Francis Dacre was then renewing the old alliance between his house and Lord Maxwell's.[96] In Yorkshire, too, Henry Cholmley made his liberty of Whitby Strand a very bishopric of Papists, where all traitors from beyond seas were received ; and for twenty miles along the sea warrants to arrest recusants were resisted, the tenants declaring that whatever the number and authority of those sent to execute them, they should be slain before any of Mr. Cholmley's people should be carried away.[97] Indeed, it was the insolence of the Papists about Whitby Strand that furnished the excuse for appointing a Lord President in 1599.[98]

So when Burghley went north in September 1599 he carried with him a bundle of commissions among which were a commission for the peace in every county within the Council's jurisdiction, a commission for Border causes, and another for ecclesiastical causes, as well as the commissions of gaol delivery and of oyer and terminer in civil and criminal causes which were regularly directed to the Lord President and Council.[99] Also there were added to the Instructions several new Articles bidding him, (1) inspect the forces and put them in readiness, taking 'special care that the strength of our people be not left in the hands of those gentlemen that are either of so small

[96] *Cal. Border Papers*, ii. no. 1013 ; Lancelot Carleton to Cecil, Oct. 1598. It was in this year that the English government was so much alarmed by the rescue of Kinmont Willie out of Carlisle Castle by Buccleugh's men and the Graemes (*ib.* ii. nos. 251-3).

[97] S. P. Dom. Eliz. cclvi. no. 83 ; cclxvii. no. 120 ; cclxx. no. 99 ; cclxxi. no. 9 ; cclxxiv. no. 11 ; *Hatfield Cal.* xi. pp. 39, 214. Sir Richard Cholmley, Henry Cholmley's son, was afterwards arrested as a helper to Essex, and was fined £200.

[98] *Ib.* p. 343-4.

[99] S. P. Dom. Eliz. cclxxi. no. 144. He was at the same time made Keeper of Sheriffhutton Castle and Park as the Earl of Huntingdon had been.

credit and ability as they are apt for bribery to suffer them to neglect their duties, or else such other as are so notoriously infected with Popery and other princes' affections as they are desirous of alteration'; (2) 'in all things labour not only to stay but to reform and correct the dangerous and abundant falling away from Religion'; (3) take good heed, when administering justice, to retain no causes at York 'which are not fit for that place'; (4) make inquest of the unlawful retaining of the subjects by persons who had fled from the realm; and (5) cause the Councillors to take an oath of obedience to the Queen and of true and faithful service in the Council.[100]

These instructions Burghley at once began to carry out. Sir Edward Yorke, the Muster-master, was set to train the shire levies; the Horse were mustered, and the unfit were rejected; and £4000 worth of armour was ordered from London.[101] Within a few months all that could be done to put the country in readiness against either a Catholic rising or a Scottish inroad had been done, and Burghley could give himself up to the work nearest his heart: the campaign against recusancy.

Recusants were indicted before the Council, 150 at a time,[102] the executions of priests and their receivers continued, no distinction being made between the followers of the Jesuits, who sought the violent overthrow of the Elizabethan settlement in the interests of Spain, and the followers of the Seculars, who were willing to take the oath of allegiance as the price of toleration. Burghley even went beyond the law to order that the Catholic prisoners in York Castle, of whom there

[100] Ib. cclxxii. no. 7; S. P. Dom. Ja. I. ii. no. 74; Titus F. iii f. 150 ff.

[101] S. P. Dom. Eliz. cclxxii. no. 101; cclxxiii. no. 12. Of 400 horse, only 300 appeared at the muster, and of these 100 had to be disallowed. It is worth noting that Cholmley claimed the mustering of the men in the liberty of Whitby Strand by virtue of his bailliwick, and took away the warrants that Sir Thomas Hoby sent there as commissioner of musters; *Hatfield Cal.* xi. p. 39.

[102] At the Lammas Assizes in Northumberland in 1600 over 150 recusants were convicted; *A.P.C. 1600-1*, p. 5-7.

were more than 50, should be dragged to the hall of the Castle every week to listen to sermons delivered in the presence of the Lord President and Council.[104] Hutton in dismay consulted Whitgift, who could only advise him not 'to contend with them in that matter, lest they say that zeal is quenched in you, and that you dote in your old age'.[105] For nearly twelve months, therefore, the recusants were haled to sermons until at the last one preached by Hutton they were so obstreperous that they had to be gagged,[106] whereupon this bad business came to an end.

Harsh as they were, these measures were nevertheless justified by success; for when Essex, who had ruined himself with the Queen by deserting his command in Ireland on learning of Burghley's appointment, was driven into premature revolt in February 1601, no rising broke the peace of the North.

This could hardly have been the case if James had been left in the belief that after Essex's downfall his succession to the English crown depended solely on the support of the northern Catholics. The southern nobles and gentry with Catholic sympathies who followed the traditional English policy of maintaining a good understanding with Spain and Flanders against France and Scotland, were bitterly opposed to the succession of the Scottish king, preferring to promote that of his cousin, Lady Arabella Stuart. Cecil could not do without the support of these men; but he saw clearly that any attempt to bring in any other sovereign than James on the Queen's death, would lead to civil war between North and South, in which the North would be aided by Scotland, and if need arose, by France; the South would also have to seek foreign aid, which could only be Spanish, and the subversion of Protestantism would almost certainly follow, no matter which

[104] *Ib.* p. 255, 282 ff.

[105] *Hutton's Correspondence*, p. 155.

[106] Longstaffe, *History of Darlington*, p. 119, n.l.

side won. England could be saved from civil war and the Reformation could be preserved, only by an understanding between James and Cecil, who would keep each his own party in play so that the Scottish king might ascend the English throne without the aid of the one or the hindrance of the other. So when the ambassadors whom James sent to London to demand from Elizabeth the recognition of his rights and to arrange with Essex for an armed rising to force her consent, arrived in March 1601 a few days after the Earl had been beheaded on Tower Hill, Cecil arranged with them at a meeting in his own house in the Strand to begin a secret correspondence with their master which ended only when James became King of England.[107]

Therefore, when Burghley went north after helping his brother to destroy Essex,[108] it became his chief business to guard the secret of that brother's correspondence with the King of Scotland,[109] and to see to it that the Catholics were not driven into a revolt of despair. The northern gentlemen associated with Essex in his mad enterprise, — Sir Richard Cholmley of Whitby Strand, Simon Mallory of Ripon, and Captain John Selby of Berwick, — were let off with moderate fines;[110] and a proclamation was issued that while the Queen could not distinguish between the Catholics who advocated her murder and those who did not, she exempted from the order to leave the country all who went before the Council, the Lord Presidents of Wales and York, or the Bishops and declared their allegiance.[111] At the same time due precautions were taken against surprise. A suggestion made in 1598 that a Border Council should be established in the Marches with power

[107] *Correspondence of James VI and Cecil* (Camd. Soc.), Introduction.

[108] It was Burghley who on the steps of the Cross of Chepe, with the Lord Mayor by his side, proclaimed Essex and his followers traitors, 8 Feb. 1601; Hume, *Treason and Plot*, p. 434.

[109] *Correspondence of James VI and Cecil*, p. 1; *Hatfield Cal.* xi. p. 235.

[110] *Ib.* xi. pp. 39, 75, 87, 103, 140, 212, 214, 564.

[111] 5 Nov. 1601; S. P. Dom. Eliz. cclxxxv. no. 52.

to attend to the defence of the inhabitants, redress of murders, and recovery of spoils,[112] was embodied in an Act for the better government of the northern counties.[113] Also the Dacre co-heiresses were allowed to buy back their lands,[114] and Lord William Howard was allowed to live at Naworth to keep watch against a rising of the tenants who were still sending money to him whom they called Lord Dacre.[115]

Thanks to these measures, James's accession to the throne in March 1603 was entirely peaceful, save for one wild outburst in the West March, where the clans, chiefly the Graemes and the Armstrongs, riding in bands 300 and 400 strong, spoiled the lieges of Cumberland and Westmorland during a whole week, until the king, on his way south, sent troops from Berwick to stay them. It is probable that, as James believed, the raid was an attempt on the part of Dacre's friends to make sure that the king should not break his promise to restore the lands to him, but it was otherwise without political significance.[116] The Catholics, who were the object of Cecil's fears, really believed in James's promise of toleration, and it was not until the re-enforcement of the recusancy laws in 1604 taught them that they had been duped, that those fears came near to being realized.

The long struggle was over at least; so, as soon as James was firmly seated on the English throne with Sir Robert Cecil, 'his Little Beagle',[117] as his Secretary of State,

[112] *Egerton Papers*, pp. 229, 231, 235, 277.

[113] 43 & 44 Eliz. c. 13. The Instructions issued under this statute to the Border Commissioners in 1605 are significantly reminiscent of those issued to the Council in the North in 1538; *Lord Muncaster's MSS.*, p. 229.

[114] 19 Dec. 1601; *Household Books of Lord W. Howard*, p. 380.

[115] S. P. Dom. Eliz. cclxxviii. no. 7. The clans too were very restless, especially the Graemes and the Carletons; *Cal. Border Papers*, ii. nos. 1241-2, 1372.

[116] Account by the Earl of Cumberland of the state of the Borders after Elizabeth's death; S. P. Dom. Ja. I vi. no. 43.

[117] James I to Cecil, 1604; Hatfield MSS. cxxxiv. no. 56

Burghley was dismissed.[118] Apart from the fact that, as he himself wrote, God had bestowed rarer gifts of mind on his brother than on him,[119] he was too closely identified with the anti-Catholic policy that had hitherto suited Cecil's plans best, to be a possible ruler of the North under James, who was not yet prepared to undeceive the Catholics whose hopes of toleration had been so long fed by his promises. So in July 1603 Burghley gave place to Lord Sheffield,[120] a sure friend of Cecil's, but so far free from any imputation of Puritanism that his first wife had been a recusant.[121]

The Council of which Edmond, Lord Sheffield, thus became Lord President in 1603 was very different from that over which the Earl of Huntingdon had presided for over twenty years; for during the vacancy of the Presidency after the latter's death, the restiveness of the Justices of Peace under the control of the Council in the North had broken into open revolt, and its authority had been impugned both by the local courts and by the courts at Westminster.

Even in Huntingdon's time there was noticeable a tendency on the part of the Government to communicate directly with the sheriffs and the Justices of the Peace instead of through the Council in the North as hitherto, touching administrative business, in which there was no judicial element. This tendency became more marked while the Presidency was vacant and, Burghley's appointment to the office made no difference. Cecil, in fact, was obliged to keep in close touch with the Justices of Peace as representing the landowning and mercantile classes on which he had to lean for support. Especially at the time of James VI's accession to the English throne, he had to

[118] But he received £100 a year out of his successor's salary; S. P. Dom. Ja. I. lx. 4 Sept. 1604.

[119] Burghley to Cecil, 9 June 1603; Hatfield MSS. c no. 88.

[120] Appointed 23 July 1603: Pat. 1 Ja. I p. 2 d. His Instructions are in the Record Office. S. P. Dom. Ja. I. ii. no. 74.

[121] Carey to Cecil, 27 May 1594; S. P. Dom. Add. Eliz. xxxiii. no. 19.

take account of the Justices' susceptibilities. So we find the Lord President writing to his brother, 'It is true I thought myself very hardly dealt with in that I was so little respected in this place, which had been most fit to be respected, that proclamations were sent down to the Bishopric a day before any came to me, and truly in the directions of letters in her Majesty's life-time five days before she departed letters of direction was (*sic*) sent from the Council joining the Sheriff and Justices with me, which was never seen before, when decorum was kept, but in those services letters were directed to the President and so authority to be sent from him to under officers'.[122] From that time there was no looking back; and before twenty years had elapsed,we find that the sheriffs and the Justices of Peace were in constant direct intercourse with the Privy Council on administrative business of all kinds. Quarter Sessions assumed the administrative duties that had once belonged to the Council in the North, and the Justices of Assize replaced it as a medium of communication between the Government and the people.[123]

Although the responsibility for the decline of the Council's administrative authority rests mainly on Sir Robert Cecil, some of it falls on Burghley himself and his immediate successors in the Presidency. Appointed to the office for reasons quite unconnected with the efficient government of the country north of the Trent, the best of them had little knowledge of, or interest in, the land he ruled, and the worst was equally unworthy of the confidence of the government and of the respect of the people. It was through Burghley that a change of far-reaching importance was made in the composition of the Council. Hitherto, the Council had been a comparatively small body composed

[122] 4 April 1603; Hatfield MSS. xc. no. 88.

[123] E.g. in July 1621 the Justices of Assize at York took order with the North and West Ridings for the repair of Ripon North Bridge, a matter that would in the sixteenth century have been left to the Council in the North; *Cal. Lord Edmund Talbot's Papers*, p. 369.

almost entirely of working officials, the men who were really governing the North, and who were most interested in upholding the Council's administrative authority. But when Burghley left the North, being deeply humiliated by his dismissal in the hour of his brother's triumph,[124] he avenged himself on his successful rival for office by nominating so many of his own friends for admission to the Council that his successor found that there were no 'rooms' left for him to place any of *his* friends.[125] Burghley excused himself on the ground that 'the largeness of the government (did) require it, and that he had named none but men of the best houses and fittest for their qualities to be allowed', adding 'I shall take it . . . as a countenance to the leaving of the place, that the world shall see I do it with my honour, for that malicious rumours are possessed I do it as forced against my will to depart with it'.[126] Few, if any, of the new members, however, were government officials, and although they liked well enough the honour of being members of the Council, they had no interest in upholding its administrative authority. Rather they were at one with their fellow landowners and Justices of Peace in resisting its efforts to control them, so that at last some of them even went as far as to decry it in public as being but ' a paper Court'.[127]

Moreover, Burghley had nominated so many that 'the place (was) pestered and dispraised with number.[128] The Council, in fact, was now too big to be an efficient governing body. Control naturally passed into the hands of the members who attended most regularly, — in this case, the legal members. The members not of the quorum attended less and less frequently, many, indeed, attending only on the first day of session when the commission was read, and it is without surprise

[124] 13 June 1603; Hatfield MSS. c. no. 94.

[125] Ib. ciii. no. 55.

[126] Ib. c. no. 49.

[127] Sir David Foulis in 1632; Rushworth, ii (1), p. 218.

[128] Hatfield MSS. cii. no. 55.

that we find in a Survey or Book of Offices compiled about this time that the Council in the North is given as consisting of a Lord President, four Councillors, and two Secretaries, with a Messenger and a King's Attorney.[129] This change was furthered by the insertion of a new clause in Sheffield's instructions (22 July 1603): "And lest it should seem that by nominating so many to be of our Council there, the authority of those who of our Council in ordinary and have fee of us for their attendance (being learned in the laws) should be too much depressed in their session with you in Council. Our pleasure is that in the sittings and meetings in Council they who have fee of us shall be placed next to Barons and barons' sons and before all others.[130]

Nothing could show more clearly than this clause the great change that had come over the Council since Huntingdon's death. Always, until now, the legal members had been named last in the commission unless they were knights, when they were named with the other knightly Councillors, and had sat in Council in the order of their naming, so that precedence had as a rule been given to the official members. This was as it should be while the Council was primarily a governing body; but now that the Council's legal work was becoming more important than its administrative, it was only fitting that the legal members should take precedence of all but those of the highest rank. The effect, however, was that the Council became more and more absorbed in legal work, until it lost its executive character almost entirely, and although it continued to play a great part in the government of the North, it did so only as a court of justice. The King's Council established in the North parts had become altogether the Court at York.

[129] Addit. MSS. 31,825. f. 11.

[130] S. P. Dom. Ja. I. ii. no. 74.

PART III.

THE COURT AT YORK

CHAPTER I.

The Court at York: its Organisation.

Strictly speaking, the history of the Court at York begins in July 1484 when Richard III made his Council at Middleham a permanent court of justice and equity for Yorkshire. Down to that time the councils that assisted the King's Lieutenant to govern the North differed in no way from the council that in those days assisted every great noble in the fulfilment of his public duties as well as in the management of his estates. They derived their judicial authority, in criminal causes from the commissions of oyer and terminer and of the peace in which they were associated with their lord by his desire, in civil causes from his seigneurial rights or the consent of his retainers, only occasionally from a royal commission to hear and determine a particular case. Richard III changed all this by entrusting the rule of the North, or at least of Yorkshire, to his nephew, the Earl of Lincoln, as his Lieutenant aided by his own Council in the North parts, to whom he gave a commission for the peace and for hearing and determining causes between party and party. Thenceforth the Council's civil jurisdiction, like its criminal, was to be derived from a royal commission, and was no longer to be confined to particular manors or to particular cases. Under Henry VII, however, the Council was again subordinated to the Lieutenant, and during at least the early years of his reign its civil jurisdiction was but little in evidence. Later on, the use made of it to fill the king's coffers made it so thoroughly unpopular that one of Henry VIII's first acts was to abolish the Lieutenancy and withdraw the Council's commissions.

This was a mistake, for, although the title to the Crown

was no longer in question and the over-mighty subject was now hardly to be feared, private feuds still hindered the administration of justice, and poor men were still at the mercy of the rich and powerful. So in 1525 the young Duke of Richmond was made the King's Lieutenant in the North parts, and his Council was set to rule there in his name. Its authority, like its predecessors', was derived from commissions of oyer and terminer, of the peace, and of inquiry of offices; but more emphasis was laid on its jurisdiction in equity, so the Council in the North, still exercising the authority of Star Chamber, became also a Court of Requests. At the same time its authority, hitherto confined to Yorkshire, York, and Hull, was extended to all the northern counties. In practice, however, this authority was limited by the existence of great liberties in which the King's writ did not run, and by the power and influence of the Earl of Northumberland. So in 1536 Parliament was called on to remove these checks by transferring to the Crown the execution of criminal justice within the liberties as without, by restricting the right of sanctuary, and by assuring the Percy lands to the king. These measures, coming as they did in the midst of a great religious revolution and at a time of acute economic distress, drove the North into revolt; but the failure of the Pilgrimage of Grace made the King stronger than ever before, and his Council was now established as the supreme executive and judicial authority north of the Trent.

Unfortunately, for this long period of over sixty years in which the Council in the North was slowly taking shape as a court of justice and equity, we have but the scantiest information as to its organisation and procedure. But from the year 1537, when the King's Lieutenant was replaced by the Lord President of the Council as governor of the North, we have an almost unbroken series of Instructions which enable us to trace in some detail the development of the court.[1] From these we learn that the years 1537

[1] See Appendix I.

to 1561 were the formative period of the history of the Court at York, during which its organisation was settled, its procedure was developed, and the limits of its jurisdiction were determined. From 1561 to 1599 there was little change to record; but after 1595 the Court was engaged in defending itself against the local courts and against the courts at Westminster, and successive revisions of the Instructions in 1599, 1609, 1629 and 1633 defined more closely the limits of its jurisdiction and made more precise the directions as to its procedure.

As constituted in 1537 the Council in the North consisted of a Lord President, Councillors, and a Secretary, who was also Keeper of the Signet. The President was by far the most important member of the Council, for without him nothing could be done, no meeting of the Council could be held, no process could be issued. To him all petitions were sent; without his warrant no writing or process of the Court could be sealed; to his custody was entrusted the book of decrees; at his bidding absent councillors must execute decisions taken by the Council. Most important of all, the Lord President alone had power to summon a meeting of the Council.

For the administration of justice the President was required to summon the Council four times a year for general sessions, each lasting for one month. At first the sessions were to be held at York, Newcastle, Hull, and Durham, respectively; but in 1556 the sessions at Hull and Durham were replaced by a second session at York and one at Carlisle. There was, however, so little business for the Carlisle session that in 1561 it was arranged that the third session should be held at York and that of the fourth session twenty days should be spent at Newcastle or some other place in Northumberland or the Bishopric, and the remaining eight days at Carlisle. The Council, however, was now permanently resident at York, and the rule that one session should be held elsewhere became so irksome and was so often evaded by special license, that in 1582 the Lord President was authorised

to hold four general sessions wherever he and two of the Councillors bound to continual attendance should think fit. The President might also summon any members of the Council to meet him at any other time or place that seemed good to him, but these sessions differed from the regular ones in that they were for administrative purposes only, and no judicial business could be taken at them except in case of sudden spoils or affrays.[2]

In the sessions, where the decision rested with a bare majority, the President had at first an absolute veto in judicial as in administrative matters. This was reasonable so long as the majority of Councillors were lawyers, canon, civil, or common as the case might be, and the President was himself a trained lawyer ; but the situation was entirely changed when, as was the case from 1538 onwards, the President was without legal training and the lay element predominated in the Council.

It was impossible to leave the procedure of the Court so regulated that on a point of law the unanimous opinion of the legal members could be set aside by the rest of the Council or by the President's veto. So in 1538 it was laid down that if the President and Council disagreed on a point of law, or on an order to be made, then the decision should remain with that party in which was the greater number of lawyers, the President's veto prevailing only when these were equally divided.[3] In other matters, however, he retained his absolute veto till 1561, when it was made dependent on support by at least one of the Councillors bound to continual attendance or two of those not so bound.[4]

The President also had full power, in case of illness or any other necessary absence, to appoint a Vice-president

[2] Instr. 1538, Arts. 1, 4, 20, 25 ; do. 1556, Art. 22 ; do. 1561, Art. 22 do. 1589, Art. 22.

[3] Ib. Arts. 2, 24 ; the position of the latter Article among several amending ones indicates that it was an addition to the original Instructions.

[4] Instr. 1561, Art. 2.

who should exercise — but only during the President's absence — all the powers that he himself enjoyed. At first he had free choice among the Councillors bound to continual attendance.[5] Then in 1550 Shrewsbury was required by the Lords of the Council to admit Lord Wharton as Vice-president;[6] but he never acted, one of the Councillors bound to continual attendance always doing so in his stead.[6a] This precedent was followed in 1556, Lord Talbot being named Vice-president in the Instructions (Art. 29);[7] but in 1561 all restrictions were withdrawn, the President being authorised to choose any of the Councillors to act for him.[8] For some years this made no difference as the Vice-presidents continued to be chosen among the legal members; but after Sir Thomas Gargrave, who had been Vice-president under five successive Presidents, died in 1579, the Vice-president was always a non-legal member of the Council.[9] As no court could be held unless either the President or the Vice-president was present, this unwritten rule concerning the Vice-presidency secured the presence at every session of at least one non-legal member.

It is probable that this unwritten rule was adopted because of the differentiation of the Council as a court of justice from the Council as an executive body, which gradually came about after 1537. At that time the only differences between the Council acting in the one capacity and in the other, were the restriction of judicial business to the four general sessions, and the limitation on the President's veto and the power of the majority in legal

[5] Instr. 1538, Art. 27.

[6] P. 173.

[7] Border Papers. iii. no. 584.

[8] Ib. iii. No. 583.

[9] From Harl. 1088, an Abstract of Attendances, it appears that Gargrave was succeeded by Lord Eure; but Hutton, Dean and Archbishop of York, Lord Darcy, Sir William Mallory, Thomas and William Fairfax, all served at different times. Sheffield generally appointed Sir Thomas Fairfax (*Wombwell MSS.* ii. p. 111); and Wentworth, when he went to Ireland, left Sir Edward Osborne as his Vice-president.

matters. So far as the composition of the Council was concerned there was no difference at all. There had always been two classes of members: (1) those who were not bound to continual attendance; (2) those who were bound. The councillors not bound to attendance were chosen among those of the northern nobility and gentry whose official position or local influence made them desirable members of the Council. Most of them held some office connected with the administration either of the Borders or of the Crown lands beyond the Trent, for which they received a salary, and so had no fee for attending the Council, save in exceptional cases; but the civil lawyers, holding no other office under the Crown, each had a fee of £50, reduced to 20 marks when their attendance was restricted to the four general sessions.[10] The Councillors bound to continual attendance were the common lawyers, of whom there were at least four; and these, in addition to board and lodging in the President's house for themselves and three or four servants according to rank, received a fee of 100 marks for a knight, or £50 for an esquire, raised in 1579 to a uniform fee of £100.[11] These Councillors with the President formed a *quorum* of whom at least two, one being the President, must be present at every meeting of the Council.[12] From 1550 it was also laid down that the President and two of the Councillors bound to continual attendance, to whom the Secretary was added in 1556,[13] should be sworn Masters in Chancery in order that they might take recognizances when necessary.[14]

Down to 1537 Councillors of both classes had been required to attend each of the four general sessions, but this rule, reasonable enough when the Council's jurisdiction was confined to Yorkshire, could not be enforced when

[10] Instr. 1538, Art. 9; ib. 1561, Art. 13.

[11] Gargrave to Shrewsbury, 1549 (Lodge, i. p. 156); Instr. 1579, Art. 12.

[12] Pat. 31 Hen. VIII p. 6. m. 13.

[13] Border Papers, i. No. 63, Art. 7.

[14] S. P. Dom. Add. Ed. VI. iii. No. 47.

the jurisdiction was extended to the Borders. Therefore in 1538 it was laid down that only the Councillors bound to continual attendance and the Civilians need attend every general session ; the others were made free to attend or not as they pleased, unless specially summoned. As the Instructions were at the same time altered to give the legal members the deciding voice in all matters of law and equity, these now secured the control of the Council's judicial business, and it was inevitable that the non-legal members should attend the sessions for administering justice less and less frequently. This tendency became more marked after the great extension of the council's jurisdiction in 1556, and after the establishment of the Council in the Manor House at York made it a permanent court, very few of the Councillors not bound to continual attendance ever attended even the general sessions except on the opening day when the Commission was read, or in response to a special summons. At other times they assisted in the administration of justice only when two of the *quorum* joined them in holding a Gaol Delivery or a Court of Oyer and Terminer in criminal causes at Newcastle, Hexham, or Carlisle.[15]

Thus even before Gargrave's death the Council as a court of justice and equity, was almost entirely differentiated from the Council as an administrative body. It had become a settled practice that the Council, when sitting in the former capacity in general sessions, should consist of the Lord President, or Vice-President, the four Common Lawyers, one or two Civilians, and the Secretary, who from 1589 to 1613 was always a common lawyer.[16] Out of

[15] *Hatfield Cal.* iii. p. 603, vi. pp. 48, 93 ; Lans. 82. No. 24 ; *Cal. Bord. Pap.* ii. Nos. 97, 184.

[16] This is evident both from the abstract of attendances, in which the names of the non-legal members seldom appear after 1580, and from the letters written by the Council to the Privy Council, to Burghley, and to other members of the Council, which are seldom signed by any but the President or Vice-president, the learned Councillors and the Secretary. The number of learned Councillors was four until 1579 when it was reduced to three, the fee being at the same time fixed at the uniform rate of £100

sessions, the lawyers divided themselves, with the Lord President's consent, so that each of them should serve at York for one quarter, together with the Secretary who always attended; and the President or Vice-president with the help of these who and of such other members as lived near York dispatched all the ordinary business of the Council between the sittings.[17]

The difference between meetings of the Council for judicial and for executive business was emphasised by the Instruction given in 1603 that at all meetings for the execution of the commission of oyer and terminer and of the peace and at church, but at no others, the Councillors bound to continual attendance should have place next to barons and barons' sons, the Justices of both Benches at Westminster and the Barons of the Exchequer.[18] Henceforth the distinction between the Council as a court and the Council as an executive body was as clear in theory as in practice, and the Treasury officials of the Stuart kings were fully warranted in describing the Court at York as consisting of a Lord President, four learned Councillors, and the Secretary.[19]

It is clear that from 1537 the legal members of the Council in the North enjoyed the control of its judicial business. Control, however, never became monopoly. No President after Tunstall was a trained lawyer, no Vice-President after 1579, and no Secretary before 1589, so that at every court there was present at least one non-legal member. Thus the danger that the practice of the Council might harden in the hands of professional lawyers into the precision and inflexibility from which the common law courts were struggling to escape, was averted; and the equitable character of the law administered by the Court at York

a year (Egerton MSS. 2790, f. 30); but it was raised again to four in 1582 (S. P. Dom. Add. xxiii. No. 59).

[17] *Halfield Cal.* v. p. 505; York to Burghley.

[18] Instr. 1603, Art. 7.

[19] Addit. MSS. 31, 825. f. 11.

was secured at the same time that the influence of the lawyers reduced the practice of the court to order and safeguarded suitors from capricious decision. Moreover, although there could be no appeal from the sentence of the court, there was a perpetual instruction to the Council that in a case of great importance, if the question were one of law, it should be referred to the Judges at Westminster or to the Justices of Assize, if it were one of an order to be taken upon the fact, it should be referred to the Council attendant upon the king.[20] These references were naturally more numerous just after the Pilgrimage of Grace, when the Councillors had still to justify their reappointment;[21] but it is clear from the correspondence between the Council of State and the Council in the North that they were never so rare as might have been expected even in the seventeenth century.

Nevertheless, so much discretionary authority in matters of justice was left to the Council in the North that the character and learning of its legal members were of great importance. That this was fully realised, is shown by the choice made by the Crown whenever there was a vacancy to be filled. During the sixteenth century, which was the formative period of the Council's history as a law court, the legal members were all men of high standing in their profession.[22] Nearly all were at least counsellors in the law, several were serjeants, and many had been Readers in their

[20] Instr. 1538, Art. 24. The Justices of Assize were given as alternative to the Judges at Westminster in 1553 (Instr. 1553, Art. 26).

[21] See *L. & P.* xii. pt. 2, passim for cases in 1537, and *ib.* xiii. No. 107 for a case in Jan. 1538.

[22] In 1576 no fewer than six pleaders belonging to Gray's Inn were connected with the Court at York. Lawrence Meeres, a single Reader, and Francis Rodes, a double Reader, were members of the Council, Martin Birkett, a barrister, was the Queen's Attorney there, John Nevill, also a barrister, was probably an Examiner, and two other barristers, William Birnam and Humphrey Purefey, afterwards a Councillor, apparently practised entirely at York (S. P. Dom. Eliz. cix. No. 41; Harl. 683. f. 65b), In 1582 all the legal members except Dr. Gibson were Queen's Counsel (Foss, v pp. 349, 421).

respective Inns.[23] Enough has been said to show how high were the attainments and standing of the legal members of the Council in 1525 and 1537, and those of their successors were not inferior. Sir Robert Bowes, for instance, was noted as without an equal in all the north country for knowledge of the law;[24] Chaloner's knowledge of the common law was second only to his knowledge of the civil;[25] and John Rokeby was a Doctor of Civil and Canon Laws "of so excellent and profound skill and learning that the parts beyond the seas, Arches of London, and the Exchequer Court at York do yet (i.e. *circ.* 1593) resound of his great praise in that knowledge, yea, it was said of him as it was of Plato for philosophy, 'ipse dixit' ".[26] When Chaloner died in 1555 he was succeeded by Ralph Rokeby, John's brother, whose knowledge of the law was so profound that Sir William Cordell, Master of the Rolls, was proud to confess that from him he had learnt all he knew of the laws of England. A Justice of Assize on the Midland Circuit and one of the serjeants appointed in 1555, he had refused to be Lord Chief Justice of England in order that he might execute justice among his own people in the North.[27] These were, perhaps the most famous members of the Council in the sixteenth century; but there were others who attained high place, such as Anthony Bellasis, a Master in Chancery under Henry VIII and Edward VI and founder of the fortunes of the Fauconberg family,[28] Francis Rodes, serjeant-at-law and Justice of Assize in 1584,[29] and John Gibson, Judge in the Prerogative Court,[30] to give but three names.

[23] Lans. 86 No. 17.

[24] *L. & P.* xii. pt. 2. No. 100.

[25] *Sketches of the Lives and Characters of Eminent English Civilians* p 21.

[26] Whitaker, *Richmondshire*, i. p. 173.

[27] *Ib.*; Dugdale, *Origines Juridicales*, p. 139; Foss, v. p. 347; Egerton MSS. 2578. f. 59.

[28] Foss. v. pp. 21, 279; *Sketches of the Lives etc.* p. 25.

[29] *Cal. of Border Papers* i. p. 252.

[30] *Sketches etc.* p. 49.

Even in the seventeenth century, when the appointments were in the hands of the President and places were bought and sold,[31] the legal members of the Council in the North were apparently never selected from the rank and file of the profession but were men of at least enough ability to be chosen Recorder for some northen borough such as York, Hull or Doncaster.[32] One of them, Sir Richard Hutton, was even made a Justice of the Common Pleas, and attained fame as the judge who pronounced ship-money illegal; previously he had been Temporal Chancellor of Durham, an office in which he was succeeded by another of the Councillors, Sir Richard Dyot.[34] It is, however, difficult to trace the professional careers of the learned members of the Council in the seventeenth century; for the great increase in the amount of business done in the Court at York made it worth while for an ambitious young lawyer to devote himself to practising before it. No longer was it possible to say of a Northern Councillor as was said of Thomas Fairfax in 1537, 'he hath his living in Westminster Hall'.[35] It is, perhaps, not too much to say that even before the close of the sixteenth century something like a separate Northern Bar was coming into existence, whereby the jealousy of the Courts at Westminster was greatly stimulated. As an instance belonging to the transition period may be noted the case of Cuthbert Pepper, a bencher of Gray's Inn,[36] Queen's Attorney before the Council

[31] P. 379.

[32] Lawrence Meeres, a legal Councillor, was Recorder of Berwick (*Cal. Bord. Pap.* i. no. 240). John Ferne, Secretary to the Council, was Recorder of Doncaster (Hardy, *Records of Doncaster*, ii. p. 230); Richard Hutton, a legalmember, was Recorder of both Doncaster (*ib.* iv. p. 73) and York (Drake, p. 368); Sir John Jackson, the King's Attorney before the Council, 1603-8, and afterwards a legal member, was Recorder of both Doncaster (Hardy, iv. p. 79) and Newcastle (Welford, *Hist. Newcastle*, ii. p. 184); Sir William Dalton, Attorney 1611—28, was Recorder of both York and Hull (Whitaker, *Richmondshire.* i. p. 328).

[33] Foss, vi. p. 333.

[34] Widdrington, *Analecta Ebor.;* Egerton MSS. 2578. f. 59.

[35] *L. & P.* xii pt. 2. No. 100.

[36] Whitaker, *Richmondshire*, i. p. 246.

under Huntingdon, Surveyor of the Court of Wards, a member of the Council in the North in 1599, who in 1603 was admitted to the place of Samuel Bevercotes, one of the learned Counsel deceased, that is, was created judge in the Northern Court.[37]

As the Council's judicial work increased, so did its organisation as a court of equity and justice become more elaborate. The Court itself underwent no change beyond the elimination of all but the strictly necessary members. It was rather by the increase in the number of the officials attached to it that its growing importance was shewn.

The most important official was the Secretary, who was also the Keeper of the Signet. It was his duty to keep a Register of all decrees and orders made by the Council, which Register remained in the custody of the Lord President. He also made out all recognizances, letters missive, commissions, attachments, precepts, etc., all which documents, as issuing from the Council, it was his duty as Keeper of the Signet to seal, but only by the order of the Lord President, Vice-President, or one of the Council acting under the President's instructions. In cases of unavoidable absence, the Signet must remain with the President or some of the Council appointed by him in that behalf.[38] The Signet was distinctive, and had, as Cromwell wrote to Tunstall, 'notable differences from all other His Grace's signets', being engraved with the royal arms supported on either side by a hand bearing an upright sword.[39] Until 1586 the Secretary always exercised his office in person or by a temporary deputy;[40] but in October of that year

[37] S. P. Dom. Jas. I. xxxv. No. 40; 18 Sept. 1603, the King to the Lord President.

[38] *L. & P.* xiii. No. 1269. It is probable that the two offices had been united from the first establishment of a Council in the North.

[39] Cromwell to the Lord President and Council, 2 Nov. 1537; *ib.* xii. pt. 2. No. 1016.

[40] In 1528 Richmond's Council appointed John Bretton deputy to Uvedale, (*ib.* iv. no. 4042); but in 1542, the latter, being still Secretary, appointed his own deputy while he was with the army as Paymaster.

Robert Beale, Clerk to the Privy Council, was made Secretary, and as it was impossible for him to act both in London and at York, Ralph Rokeby the younger was appointed as his deputy.[41] In August 1589, however, Rokeby was made joint Secretary with Beale, receiving therefor half the salary and fees;[42] for the share the latter had in the tragedy of Mary Queen of Scots as the man who carried down the warrant for her execution, made it more than his life was worth for him to venture North of the Trent, or so he said.[43] After his death the Secretaryship at York was given to Secretary Herbert, John Ferne, who had succeeded Rokeby in 1595,[44] continuing to exercise the office as his deputy;[45] but when Herbert died the office was given to Sir John Ferne and William Gee jointly.[46] Just at this time there was keen competition for the office, for the very low salary of 50 marks by no means represented all the emoluments. The Secretary was in fact entitled to all the fees payable for recognizances, commissions, and all other official documents emanating from the Court, and as Keeper of the Signet he was entitled to 6d. for every document sealed by him.[47] The fees were fixed by the Instructions, and the President and Council were directed to deal sharply with offenders, for which purpose they were given control over all the clerks appointed by the Secretary to assist him.[48] During the quarrel with the Courts at Westminster, however, there was a sudden decline in the profits of the place,[49] and as the income no longer

[41] Harl. 1088.

[42] S. P. Dom. Add. Eliz. xxxi. No. 39. Cf. Lans. 79. f. 192.

[43] *Halfield Cal.* ix. p. 377.

[44] S. P. Dom. Eliz. ccliii. No. 80.

[45] S. P. Dom. Eliz. cclxxxi. No. 9, July 1601; cf. Instr. 1603, Art. 8

[46] In June 1604; S. P. Dom. Jas. I. viii. No. 64.

[47] Harl. 6808. f. 52, 'Concerning the Court at York established by K. Hen. VIII'.

[48] Instr. 1545, Art. 17.

[49] In Nov. 1611 Sheffield wrote that the poverty of the Court of the North now prevented their paying rewards or even fees (S. P. Dom Jas. I.

sufficed for two Secretaries, Sir Arthur Ingram was made sole Secretary in 1612, though he did not exercise the office in person but by deputies appointed by himself and holding no patent from the Crown.[50] His successor, Sir John Melton, however, discharged his duties himself,[51] as became a Secretary of Wentworth's choosing.

Of the officers connected with the Court who were not members of the Council, the most important was the Attorney, first appointed in 1556[52] 'to prosecute and set forth for Her Majesty as well by way of Information as by Indictment before the Lord President or Vice-President and Council, both in their sittings of hearing of causes and in their sessions of Oyer Determiner or elsewhere, as the said Council shall appoint and as the cause shall require, all and every offences and matters of Treason, Murder, Felony, Riot, Force, Breach of Peace and other Misdemeanours touching breach of the laws, and for the good order and quiet of those North parts'.[53] He was empowered to procure forth process upon information before the Council against all who broke or forfeited any recognizance or obligation taken by the President, Vice-President and Council or any of them, or by the sheriff or other officer for appearence before the Council. Into his hands came all fines and amer-

xvii. No. 66). His statement is borne out by the fact that in Dec. 1611 the King paid to Sence, widow of Jonas Waterhouse, lately the King's Attorney at York, £262 2s. 5d., being £187 2s. 5d. arrears of wages together with a reward for 2½ years' service (ib. lxv. No. 68; Warrant Book, iii. p. 33).

[50] Ib. lxviii, 26 March 1612; cl. No. 28.

[51] He signed letters and documents just as Uvedale and Eynns used to do.

[52] "At that time [two years before Mary's death] the Lord President got his own servant, Thomas Sutton, appointed Attorney, who held office two years... In the last Instructions [Dec. 1558] William Woderoffe was appointed. Being sick at the time, he sent a deputy who served two sitings. Then Woderoffe died, and twelve months ago Richard Whalley of Gray's Inn was appointed by the Queen, who was too ill to account, and is now dead'; Gargrave to Cecil, 21 Sept. 1560 (Bord. Pap. iii. No. 424).

[53] Instr. 1556, Art. 35.

cements, for which he had to make annual account to the Council, which in turn made certificate to the Privy Council of all such sums as remained after the fees of the Councillors which were secured on the fines had been paid, and the expenses of the upkeep of the Manor House had been met.[54]

To another class of officers belonged the two Examiners of Witnesses. They were at first appointed by the Secretary; but the frequent and prolonged absence of Uvedale, the first Secretary, who was also Paymaster to the Northern Army and Garrisons,[55] gave opportunity for such irregularities in the Secretary's office, especially in the way of demanding higher fees than were fixed by the Instructions,[56] that the appointment of the Examiners and the supervision of the Clerks was first made subject to the Lord-President's veto (1545)[57] and then given wholly to the Lord President and Council (1550).[58] By some oversight the clause in the Secretary's patent enabling him to appoint assistants was not modified in agreement with the Instructions; but it made little practical difference, for although the appointment was actually made by the President and Council, the Secretary seems to have been free to make what arrangement he pleased with the Examiners as to a share of the fee for each examination.[59] However, in 1595, John Ferne of the Inner Temple, who had just been made deputy Secretary, fell out with the Examiners,[60]

[54] Ib. Art. 38.

[55] *Dict. Nat. Biog.* Uvedale, John.

[56] This is the probable explanation of the fact that in 1561 Thomas Eynns petitioned that he might enjoy the same fees as his predecessor did in Henry VIII's time, and gave a comparative table of fees past and present which shows those of Henry VIII's time much higher than they ought to have been under the Instructions (Bord. Pap. i. No. 65; iv. No. 190).

[57] Instr. 1545, Art. 17.

[58] Instr. 1550, Art. 23.

[59] *Hatfield Cal.* vi. p. 24; Ferne to Cecil, 25 Jan. 1596.

[60] Mr. Nevill, one of the Examiners, had accused Ferne of remissness in not informing the Queen and the Council of Huntingdon's illness and approaching death (*ib.* v. p. 508).

and the whole question of their appointment was raised, they seeking to obtain their offices with the whole fee under the Great Seal, Ferne claiming to appoint them under his Letters Patent.[61] The Lord President and Council then intervened, claiming that according to precedent the appointment of the Examiners belonged to them.[62] Their case was incontrovertible;[63] and after a contest that lasted some years, the decision was given in favour of the Lord President and the Council.[64]

With the Examiners must be classed the 'Register' or Clerk of the Court, who was appointed by the Secretary subject to the President's approval, and who in the seventeenth century drew an income of £300 a year.[65] We first hear of this official in 1568,[66] when it was laid down by the Council that it was his duty to keep a register of the names of all against whom any attachment had been awarded with the cause, which book must be delivered to the Lord President three days before the beginning of each sitting. At the same time he was to present a book of all matters at issue in the Court with the names and addresses of the parties, a book of matters answered and not at issue, and a book of bills to be answered in that sitting. Also three days before a sitting he had to deliver the names of persons bound by recognizances with the sureties and the amount of the bonds.

Other officials connected with the Secretary's office were the two Clerks of the Seal, who drew £100 a year, the Clerk of the Tickets, whose duty it was to copy the Answers and the evidence by commission, and the fourteen

[61] *Ib.* vi. p. 24-5.

[62] *Hutton's Correspondence,* p. 116.

[63] Harl. 1088 f. 29b, an entry of 10 Nov. 1578 that the Lord President and Council admitted James Cotterall, gentleman, as one of the Examiners and received his oath.

[64] S P. Dom. Eliz. cclxxiii. No. 32, Nov. 1599.

[65] Harl. 6115. p. 21. "*A List of the Mayors of York*", by Sir Christopher Hildyard, annotated by Sir Thomas Widdrington.

[66] S. P. Dom. Eliz. xiv. No. 42.

Clerks who also acted as Attorneys.[67] How the Clerks were paid in the sixteenth century we do not know, but at the beginning of the seventeenth century they were allowed to take for themselves the fees paid for king's letters and bills, amounting to over £600 a year, and when these fees with the right of making such bills and letters were given to John Lepton, who was appointed Clerk for king's letters in 1606, the Council had to raise the fees, the difference, together with £100 a year paid by Lepton, going to the Attorneys whom he made his deputies. Besides these fees they had their fees as Attorneys which were fixed by the Council. At the beginning of the seventeenth century these had risen to no more than 2s. for each case at a sitting, but to compensate them for the loss due to Lepton's patent this was afterwards raised to 2s. 6d. Lepton's office, however, was abolished in 1630, and it is chiefly important for the share it had in bringing the Council into disfavour with the northern gentry.[68]

The next officer was appointed, not by the Council nor by any member of it, but by the Sheriff. As he was bound to make attachments and execute such-like duties at the command of the Council, he found it convenient to keep at the court a deputy for this purpose. This was the Clerk of the Attachments, who was paid £10 a year,[69] and to whose office the sheriff usually appointed the Lord President's private secretary.[70]

The Council did not, however, rely only on the sheriff for execution. There had always been attached to the Council a Messenger, or Pursuivant as he was afterwards called, receiving 10 marks a year, whose duty it was to attend on the Lord President or Vice-President, and abide their orders.[71] After the rising of the Earls had been sup-

[67] Harl. 6115. p. 21.
[68] P. 383 ff.
[69] Harl. 6115 p. 21.
[70] *Hatfield Cal.* ix. p. 398.
[71] *L. & P.* xiii. No. 1269.

pressed, and the campaign against recusancy had begun in real earnest, the duties of the Messenger of the Court were often too dangerous for an ordinary Pursuivant, so a Serjeant-at-arms was appointed in 1579 at a wage of 25 marks a year to attend with his mace upon the President, his duties being identical with those of the Serjeant-at-arms who attended the Court of Chancery, and the Council in the Marches of Wales.[72] Both these officers were appointed by the Instructions; but the ten Collectors of Fines, receiving £40 a year, and the two Tipstaves, receiving £20 a year, who completed the staff of the court, were appointed by the President and Council.[73]

[72] Egerton MSS, 2790. f. 41 ff.; Blackstone, iii. p. 444; Skeel, p. 288.
[73] Harl. 6115 p. 21.

CHAPTER II.

The Court at York: its Procedure.

Since the primary causes of the establishment of the King's Council in the North were the facility with which the forms of law lent themselves to abuse, and the inadequacy of the common law system of trial by jury to secure the ends of justice, it was essential to the cause of good governance and indispensable for the speedy and indifferent administration of justice, that the northern tribunal should be able on occasion to hear and determine all offences short of felony without presentment or trial by jury.

Richard III's Council had almost certainly possessed the power of proceeding in such cases by way of bill, witness and examination, to summary conviction.[1] No less authority was given to Henry VII's Lieutenants and High Commissioners, if not by commission, then by the statute of 1495-6,[2] which, after declaring that many wholesome statutes could not be executed by reason of the embracery and corruption of Inquests, gave the Justices of Assize and of the Peace, 'upon information for the king; authority and power by their discretion to hear and determine all offences and contempts committed and done by any person or persons against the form, ordinance and effect of any statute made and not repealed', and to award and make like process against such offenders as against any person or persons presented and indicted before them of trespass against the king's peace, also to give the defendant costs and damages against the informer, should the latter fail

[1] P. 65.

[2] 11 Hen. VII c. 3.

to make good his accusation, provided that such information did not extend to treason, murder or felony, nor to any other offence whereby any person should lose life or member, or any lands, tenements, goods or chattels to the person making the information. Necessary as it was that the ministers of justice should have this power of summary convinction when dealing with an offender so powerful that no jury in the county could be bold enough to 'pass upon him', at the beginning of the Tudor period the Justices of the Peace were not yet ready to be entrusted with authority so great, nor were the Justices of Assize free from the reproach of abusing their power to fill the king's coffers. So the first year of Henry VIII, which saw the sacrifice of Empson and Dudley to popular anger, saw also the repeal of the Act.[3]

Nevertheless, the precedents created by Richard III and Henry VII remained, and when the Council in the North was re-established in 1525, the commissioners were given power 'to enquire by the oath of true and lawful men, or otherwise, of offences against the peace, and to hear and determine the same according to the laws and customs of the realm, or according to their discretion'.[4] Therefore, while the Council was bound to use the common law method of inquisition and verdict in cases of treason, murder and felony, in dealing with all other offences against the peace it was free to use at discretion the more summary and efficient procedure of bill, witness, and examination, which the Court of Star Chamber had already made its own. Naturally this procedure established itself to the exclusion of the common law system of trial by jury, hampered as this was by the inability of the courts using it to compel the attendance of witnesses,[5] or to receive the

[3] 1 Hen. VIII c. 6.

[4] Commission of 1530; see App. III (i).

[5] This power was first given to the common law courts by 5 Eliz. c. 9. It is, perhaps, not superfluous to point out that the Council in the North, unlike the Council in the Marches of Wales, had no power to administer torture (*Hatfield Cal.* ix. p. 154).

evidence of the defendant. That the Council should follow the same procedure when hearing causes between party and party was quite in accordance with its own antecedents,[6] as well as with the practice of Chancery, on which the Council as a court of equity was modelled. Thus, in its principal jurisdiction the Council in the North followed the summary procedure of the Courts of Chancery and of Star Chamber.

The disappearance of the Council's registers makes it impossible to trace the early history of the development of its procedure. We are compelled to rely almost entirely on the Instructions issued to the Council from time to time, and these give very little information as to its procedure until they were revised in 1559 and 1561. By that time the nature and extent of the Council's jurisdiction had been settled, and to it few notable additions were to be made; but that the Council's procedure required modification, especially to enable it to compel appearance before it, and obedience to its decrees, was already evident. So, on the initiative of the Vice-president Gargrave, considerable additions to the Instructions were made, whereby the organisation of the Council as a court of justice was improved and its procedure strengthened.[7] Further changes were made from time to time as need arose, but all were noted in the Instructions, so that from 1556 onwards it is easy to trace the development of the Council's procedure.

Proceedings began with the exhibition of a bill of complaint to which the defendant was required to put in an answer, then the parties, having taken the *ex-officio* oath,[8] were examined on interrogatories, the evidence of their witnesses was taken upon affidavit before one of the official Examiners of the Court, or by depositions before commis-

[6] See Part. I, Ch. 3, 4

[7] P. 185.

[8] 'By this the person who took it swore to make true answer to all such questions as should be demanded of him' (Stephens, *Hist. Crim. Law.* i. p. 338)

sioners appointed *ad hoc* by the Council[9], and a day was appointed for hearing. When the case came on, it was argued before the Court by counsel [10] as in Chancery, after which the Council gave decree; unless the case involved a knotty point of law, when it was referred to the Justice of Assize, or sometimes to the Judges at Westminster, or if the Council were in doubt as to the order to be made, the decision might be referred to the Privy Council.[11]

An admirable illustration of the Council's procedure is forthcoming in an account given by Rutland to Cecil in 1562[12] of the order of the proceedings in the case between John Graistock and George Palmes for a lease of the parsonage of Esington. 'First a bill of complaint was exhibited by John Graistock against George Palmes, supposing that the said George had wrongfully entered into the parsonage of Esington. And for that the said plaintiff showed a lease for his title, made under the now Lord Archbishop of York's seal. Process were awarded to George Palmes to answer the matter, and to suffer the plaintiff according to his lease to occupy the parsonage or to show a cause upon the sight why he should not so do. The said George Palmes came in, and answered the matter and shewed for his cause and title, a lease made by Dr. Heath, late Archbishop of York, and confirmed by the Chapter a long time before the deprivation of the said Archbishop Heath, and required to continue his possession. Hereupon the matter was heard and the Counsel of both the parties heard speak and because the plaintiff should have time, he had first one day given and after that another to reply to the intent he should show cause, if he could for avoiding of the first lease and the possession of the defendant. At the third day, for that

[9] E. g. in a suit between John Alredd, Esq., and the Mayor and Aldermen of Hull concerning the course of a spring of water, 17 Sept. 1595 (Hull Records).

[10] All Instructions fix the fees which attorneys and counsel may take for each case at each hearing.

[11] P. 150; cf. note 54 and S. P. Dom. Eliz. cclix. No. 100.

[12] Border Papers vi. No. 48.

the plaintiff shewed no sufficient matter to disprove the said former leases, being anciently sealed by the late Archbishop's seal and the seal of the Dean and Chapter, but only made allegation that the same should not be delivered according to the date, therefore the defendant was continued in his possession according to his former lease, until the matter might be further tried. And the Lord Archbishop had day given to join in and with the plaintiff if he would. All which aforesaid orders be and remain extent of Record in the Court'.

Not always, perhaps not often, did a case follow a course so simple as this. At every stage difficulties might arise and the proceedings be delayed; though there is no record of a northern case taking so long as one before the Council in the Marches of Wales which lasted for six years.

The bills seem to have been generally drawn up by counsel, and exhibited by attorneys, who were required to note on their bills the names and addresses of the parties as also the pleas. Unjust and vexatious complaints dictated by pure malice were not unknown, but were discouraged by the award of heavy costs against the plaintiff. Lest the time of the Court should be wasted by the presentation of frivolous complaints, or such as could not be entertained there, the attorneys were ordered to present no bills but such as by the order of the Court might lie in that Court.[13]

As the Court was specially intended to relieve those who were so poor as to be unable to pursue the common course of legal redress, the Instructions to the Council first prescribed the fees which might be taken by an attorney and by counsel for any one case at a sitting, as 12d. and 20d. respectively, and the Council was directed to enforce this rule with great strictness[15]. Even after power had

[13] S. P. Dom. Add. Eliz. xiv. No. 42.

In Mary's reign suits before the Council were greatly favoured by the gentlemen of Northumberland as a means of annoying those with whom they were at feud; Dacre to Shrewsbury, July 1557 (Strype, *op. cit.* Pt. 2. Vol. ii. p. 69).

[15] Instr. 1538, Art. 13.

been given to the President and Council to alter these fees when they saw cause,[16] they rose very slowly,[17] and were no more than 2s. and 40d. respectively in 1608.[18] Also, the President and Council were authorised to appoint counsel, attorney, and process for those too poor to pay even the very low fees prescribed.[19] The rule seems to have been very strictly enforced, as was easy since the attorneys, of whom there were fourteen in the seventeenth century, were all clerks in the Secretary's office,[20] and as such amenable to the discipline of the President and Council.[21]

The bill having been presented, the next step was to induce the defendant to appear before the Court and put in his answer. For this purpose the Council used, not the *subpoena*, which belonged to Chancery, but a letter for appearance under the signet;[22] that is, the open writ of summons which Chancery did not adopt till 1833.[23] Process for appearance was as a rule returnable at the next general sitting of the Court, but in urgent cases, especially such as involved a serious breach of the peace, process was issued for appearance *super visum* and returnable generally within six or fifteen days.[24] The procedure to be followed in case of refusal to obey the letter for appearance was at first left to the discretion of the Council, but was precisely laid down in the Instructions of 1556 and amended in 1561.

[16] This power was first given in 1556, Art. 39.

[17] In Nov. 1568 Sussex and the Council fixed them at 16d. and 40d. respectively (S. P. Dom. Add. Eliz. xiv. No. 42).

[18] Harl. 6808 f. 52, 'A Complaint sent in to Chancery'.

[19] This appears in all the Instructions.

[20] Harl. 6808 f. 52.

[21] Instr. 1550, Art. 23; thenceforth this Article appears in all Instructions.

[22] The subpoena as well as the letter for appearance under the signet is mentioned in the Table of Fees given in the Instructions of 1538 (Art. 18) and 1545 (Art. 16); but it disappeared from the Table in 1550 (Art. 22), and did not appear again.

[23] Kerly, *Hist. Equity*, p. 275.

[24] S. P. Dom. Eliz. cclix. No. 100.

If the summons were ignored, process of attachment was to be directed to the sheriff, bailiff, or mayor, unless the person wanted was a noted offender who had taken refuge in the Marches or in Carlisle or Berwick, in which case process for his arrest was directed to the Wardens, or the chief officers of the town or castle in question.[25] If this failed, the Council was authorised to follow it up by process on pain of allegiance and by proclamation of rebellion, 'in such sort as is used in Her Majesty's High Court of Chancery'.[26] If the defendant still refused to answer, and fled out of the limits of the Commission, then the Lord President, or Vice-president, or three of the Council, two being bound to attendance, could issue a new attachment or other process with special letters declaring his offences to the sheriff of the county to which he had fled to apprehend him. If he still eluded arrest so that process could not be served on him, the sheriff had to certify the Lord President and Council, who were then authorised to sequester the profits of his lands, goods and chattels and to order the same as cause required. At the same time they were directed to proceed to the hearing, examination and determination of the case, notwithstanding his absence, according to the laws, statutes and ordinances or otherwise according to their discretion, and further to assess such fine of the absentee for his contempt as seemed good to the Court.[27]

This Instruction underwent further modification in 1572,[28] when it was laid down that, after sequestration, process of proclamation was to be directed to the sheriff of the county in which the defendant was last known to

[25] Instr. 1561, Art. 41.

[26] Instr. 1556, Art. 33.

[27] Instr. 1561, Art. 29. The insertion of this Article is of particular interest as indicating the care with which the procedure of the Council in the North was being assimilated to that of Chancery; for it was at this very time that Sir Nicholas Bacon, then Lord Keeper, was introducing into the procedure of Chancery the sequestration, long since adopted by the Courts Christian from Roman Law (Blackstone, iii. p. 444).

[28] Instr. 1572, Art. 29.

have had his residence within the commission, to make proclamation on two several market days in the market town next to his residence, to the effect that the offender, or someone lawfully authorised for him, should on the first day of the next session of the Council appear to answer all matters against him for all offences, costs, charges, fines and amercements, or otherwise the profits of his lands would be sequestered until he appeared and submitted. Proclamation thus made, the Council could proceed to examine the complaint as if he were present; and if the proofs or witnesses satisfied the Court on the point, they were to satisfy the plaintiff according to justice as to the matter itself, costs and damages, out of the revenue of the sequestered lands, which were then to be restored to their owner. This procedure was much more drastic than that of Chancery, which only sequestered the lands or goods in dispute,[29] and in 1609 it underwent considerable modification. The Instructions of 1556 were reverted to, and it was directed that if letters of allegiance, attachments, and proclamations of rebellion failed to bring the defendant before the Court, the lands and goods in suit and question, but these only, might be sequestered until the Court took further order. If the defendant having his habitation or lands within the limits of the commission fled out of those limits, then letters missive under the Signet were to be left at his house, so that there was likelihood that he might come to know of them. If he still refused to appear and remained beyond the limits of the Council's jurisdiction, then after a certain date the Council might proceed to hear the case according to justice and equity.[30]

If and when the defendant appeared, it by no means followed that the process of extracting an answer from him began at once. He might, as in Chancery,[31] demur to the bill as not containing sufficient matter of equity,

[29] Kerly. p. 119.

[30] Instr. 1609, Art. 30.

[31] Blackstone, iii. pp. 446-7.

or where the plaintiff on his own shewing appeared to have no right; or he might plead to the jurisdiction, showing that the Court had no cognizance of the case, or to the person, shewing some disability in the plaintiff; or he might do both. Thus, in an important case in January 1596, in which the Attorney in the North laid information against Henry Farrar and John Lacy, two of the Justices of Peace in the West Riding, for contempt of a *supersedeas* granted by the Council in the North, the defendants demurred to the bill as an insufficient and untrue information not made in the form usual in the Court, and further pleaded that the Court should not have jurisdiction, since the information called in question the judicial conduct of the defendants and other Justices of the Peace in the West Riding, among whom were the Lord Chancellor and the Lord Treasurer, neither of whom lived within the jurisdiction of the Council, the matter moreover being one more aptly to be censured and determined before the Lords in the Star Chamber.[32]

When pleas and demurrers were disposed of, and a sufficient answer had been obtained, proceedings might stop, the parties being persuaded to accept arbitration by a commission which might include one or more members of the Council, but was frequently directed to some of the Justices living near the disputants. If this course were adopted, the matter ended, and the Council heard no more of it.[33] Should the commission, however, be refused, the case proceeded on the ordinary lines, and the plaintiff might then put in a Reply, to which the Defendant could rejoin.

Henry VIII tried to restrict the proceedings before hear-

[32] Case printed from original documents in *Yorks. Archae. Assoc. Record Series*, iii. pp. 1 ff.

[33] S. P. Dom. Add. Eliz. xiv. No. 69. There is among the Hull Records a letter to the Council in the North in which the Mayor and Aldermen of Hull refused this course when suggested to them by the Commissioners sent by the Council to take evidence in a case they had before it. They declared their willingness to make agreement with the plaintiff when the case was over, should they win, but to trial it must come.

ing to the exhibition of the bill and the entering of the answer, forbidding any replication, rejoinder or other delay.[34] It was apparently found impossible to simplify procedure to this extent; for the restriction was afterwards withdrawn;[35] and if we may accept as evidence of the practice of the Court an illustration drawn from it by Archbishop Hutton to indicate the difficulty of reaching a true decision, we must suppose that proceedings before the Council in the North might be as tiresome as in Chancery itself. The Archbishop, writing to Cecil in 1602, says,[36] 'I . . . have been a Judge in this Council many years, and sometimes very hard it is to find out the truth, as for example, A putteth in his bill into the court, B putteth in his answer, A his replication, B his rejoinder, A his rebutter, B his surrebutter (if I miss not the words of Art). After witnesses are examined on both sides, published and read, and yet sometimes the Council cannot discern whether to decree with A or dismiss B'. If this be not a libel on the practice of the Court, such dilatory proceedings must have been very rare, since few of the poor suitors, for whose special benefit the Court was erected, could have afforded to pile up costs to the extent implied.

It is possible, however, that something of the kind went on during Archbishop Young's presidency; for when Sussex succeeded him, he ended at a single sitting at York 275 cases of which 149 were old, and at Carlisle two months later he dealt with 199 cases, of which 115 were old.[37] A rule now adopted by the Council that those who fraudulently delayed the execution of justice, as well as those who unjustly complained and wrongfully vexed the people, should pay great costs as an example,[38] must have had a salutary effect, for under Huntingdon such extravagances

[34] Instr. 1538, Art. 13.

[35] In 1553.

[36] *Hatfield Cal.* xii. p. 170.

[37] S. P. Dom. Add. Eliz. xiv. Nos 69, 79.

[38] Ib No. 42.

seem to have been exceptional. Indeed, the Court soon had too much to do, and Counsel and Attorneys were too busy to waste time over such dilatory tactics.[39]

Even when the time for taking evidence had come, a new difficulty might arise. The Council had no power to compel the attendance or testimony of an unwilling witness; and in such case it was necessary to obtain a *subpoena* from Chancery.[40] Only, for poor men who, owing to their ignorance of this requirement, had neglected to obtain the necessary writ, the Council would issue letters *ad testificandum* requiring the presence of a witness. Yet no penalty could attach to disobedience, and justice must often have been defeated through the absence of a necessary witness. Less often, perhaps, after 1599 than before; for in that year the Lord President and Council, or two of those bound to attendance, were authorised to give suitors and others summoned before them privilege of freedom from arrest by any inferior court within their jurisdiction.[41]

When at last all difficulties had been disposed of and decree had been given, it remained only to issue process for its execution, which might be done out of Court by any of the Council attendant whose signature was by the Instructions sufficient warrant for the Signet.[42] At this stage a new difficulty might arise through the person against whom process was awarded refusing to obey. In such case

[39] Coke in 1609 made it a chief ground of complaint against the Council in the North that 'they have above 2000 causes depending at one time, and having but 5 counties and 3 towns; at one sitting there were about 450 causes at hearing; whereas the Chancery that extends into 41 counties English and 12 in Wales, in all 53, had in Easter term but 95 to be heard, and in Trinity term but 72' (*Rep.* xii. f. 50).

[40] S. P. Dom. Eliz. cclix, No. 100, being a series of charges laid against the Council in the North, and its replies thereto, 16 Aug. 1596, Reply to the 5th charge. It would, however, appear that under Henry VIII the Council did issue subpoenas; see note 22.

[41] Ib.; Titus F. iii. f. 130; Instr. 1603, Art. 38.

[42] Instr. 1538, 1545, and 1550, Art. 4, require the consent of the Lord President or two of the Council bound to attendance, but in 1553 (Art. 5), the number of the latter was reduced to one and so remained.

a letter of attachment was issued to the sheriff to imprison the offender unless he were in York or wherever the Council might be, when the Pursuivant or Tipstaff was ordered to arrest him under warrant from the Council, who could sentence the offender to imprisonment or fine at their discretion, besides requiring him to pay great costs for the delay.[43]

The Elizabethan Instructions make no provision for the event of the defeated party fleeing out of the Council's jurisdiction, and so beyond its power of arrest. Nevertheless, the Court seems to have interpreted the Instruction as to the procedure to be followed for compelling appearance as authorising it to sequester the lands and goods of the fugitive to satisfy the victorious party.

Only by this supposition can we explain the terms in which Sheffield asked for certain additions to the Instructions when these were being revised in 1609.[44] He says, 'Whereas the process of sequestration be in effect utterly taken away but in cases where the things in question may be sequestered, which happeneth very rarely, there will be no means to compel any person to perform any order or decree to be made by the President and Council but by attaching the body of him against whom such order or decree shall be, which many wilful persons will easily avoid by withdrawing and keeping themselves out of the limits of that jurisdiction'. He then went on to pray that there should be added to the Instructions an article that the lord Chancellor should be commanded to award attachment against such an offender on exhibition of a certificate under the signet of the Council in the North that such order or decree had been made, and execution refused and avoided by flight. The Instructions as enrolled therefore contain an article empowering the Council upon execution being refused to sequester the lands or goods in question, the lord Chancellor or lord Keeper being directed, on certifi-

[43] S. P. Dom. Eliz. cclix. No. 100, (7); Instr. 1556, Art. 34; S. P. Dom. Add. Eliz. xiv. No. 42.

[44] S. P. Dom. Jas. I. xlvii. No. 48.

cate from the Council, to send a messenger for such an one as sought to avoid execution by flight, and bring him before the Council to fulfil its order.[45]

The jealousy between the Court of Chancery and the Council in the North made it antecedently improbable that this arrangement would work well, and the Council seems to have adopted the practice of sending its own Serjeant-at-arms to arrest offenders no matter where they had found refuge. No objection seems to have been taken to this till Wentworth's efforts to revive the Council's governmental authority provoked a strenuous resistance. Then one of his opponents, whom he had had arrested in Holborn by the Serjeant-at-arms, petitioned the Privy Council for release on the ground that the Council in the North had no right to make an arrest outside the five northern counties. The matter was referred to Attorney-general Noy, and on receiving his report the Council decided that precedent was for the Council in the North. The Instructions were therefore revised in this sense in March 1633, the clause requiring the Chancellor's intervention to give effect to the Council's decree being omitted, and another inserted in its place to the effect that if any against whom one or more commissions of rebellion had been issued, fled out of the Council's jurisdiction, the Lord President, or Vice-president, or three of the Council, two being of fee, might by commission of rebellion send the Serjeant-at-arms to attach the offender wherever he might be found.[46]

At the same time steps were taken to prevent the need for such measures by empowering the Council to require any defendant against whom a commission of rebellion had been issued, on his appearance before the Court to give bond with two or more sureties to perform its order or decree if given against him, security to be taken in criminal cases as was customary in the Court.[47]

[45] Pat. 14 Jas. I, p. 22; 17 July 1616.

[46] For a fuller account and references, see pp. 416 f.

[47] Pat. 8 Car. I. p. 8. m. 16d. Art. 30.

The decree once given was final, in so far as there could be no appeal from it to any other court. English common Law made no provision for an appeal in criminal cases, and the Council in the North as a criminal court in this respect differed in no way from Quarter Sessions or the ordinary courts of Oyer and Terminer and Gaol Delivery from neither of which did appeal lie to any other Court.[48] Nor was appeal possible from the decisions of the Council as a Court of Equity.[49] The only remedy was to take the case to the Courts at Westminster. It seems, however, that this was seldom done after decree had been given, at least before the quarrel between the Council and the Courts at Westminster, the aid of the Common Law Courts or of Chancery usually being sought at an earlier stage of the proceedings. As this would have defeated the very object for which the Court was set up, namely, to afford relief to those too poor to pursue the common course of legal redress, it was clear that the Council must have power to prohibit an obstinate or malicious defendant from removing the case to Westminster. The point was raised very early, the Council finding it necessary to ask in 1543 whether it was to continue to stay writs of *subpoena* for appearance in Chancery when both parties dwelt within the limits of the Commission.[50] We do not know what answer was given at that time; but there are in the law reports several cases shewing that until 1592 Chancery

[48] Holdsworth, i. p. 84; cf. Paley, *Law & Practice* etc. p. xxix.

[49] Coke, on a Prohibition to stay proceedings in the Court of Requests, said, 'It is to be observed for a general Rule and Maxim of law, that if any Court of Equity do intermeddle with matters that are properly at the Common Law . . . they are to be prohibited; the reason of this is, because their Rules and Judgments are as binding as the laws of the Medes and Persians, not to be altered, and upon which no Writ of Error or Attaint lyeth; and this is the true Reason why they in such cases ought to be prohibited before their judgments given . . . after a Judgment and decree given in a Court of Equity, if erroneous, no remedy hath the party against whom the same is given, for no error or Attaint lyeth in such cases'. (Bulstrode, *Reports*, iii. p. 197).

[50] *L. & P.* xviii. pt. 2. No. 34.

not only admitted the right of the Council to stay a suit in Chancery or shew cause why it should not be heard at York,[51] but also accepted as a good demurrer the statement that both parties lived within the limits of the Council's jurisdiction.[52] Not until the very close of the sixteenth century did the possibility of carrying a case from before the Court at York to one of the Courts at Westminster become a serious hindrance to the usefulness of the Council in the North.

Besides the regular procedure upon bill and answer the more summary mode of procedure by petition was admitted;[53] but owing to the disappearance of all the Council's registers and other documents, it is impossible to discover in what cases or circumstances the substitution of the petition for the bill was allowed.

The course of proceeding outlined above was that followed in suits between party and party, and in its development it closely resembled that of Chancery during the sixteenth and early seventeenth centuries.[54] In Crown cases the procedure was modified in several important particulars. In these cases the proceedings were founded not on a bill,

[51] *Choice Cases in Chancery*, p. 51, Harrison v. Harrison, 22 Eliz; p. 85, Vavasor v. Folbery, 23-4 Eliz.

[52] *Ib.* p. 68, Warcop v. Heyber, 5 & 6 P. & M. (1558); Rogers v. Merehouse, 5. & 6 P. & M.; p. 88, Nelson v. Nelson, 23-4 Eliz. (1581); Walker v. Lathes, 23-24 Eliz.; Proctor v. The Earl of Cumberland (1557) Strype, *Memorials*, iii. pt. 1. p. 563-4). These cases prove the contention of the Council in Jan. 1597 that not only had Chancery always hitherto approved their conditional stay of proceedings in that court, but Sir Nicholas Bacon and Sir Thomas Bromley had allowed as a good demurrer that both parties were resident within the Northern Commission (Lans. 63. No. 27, printed in Strype, *Annals*, No. ccvi).

[53] Instr. 1609, Art. 23. The substitution of the petition for the more formal bill is in accordance with the practice of Chancery (Kerly, p. 126). There is among the Rutland MSS a petition presented in 1557 by Henry Jeneson of Buttercram that his ewes and lambs have been driven off by William Darley, gentleman (*Cal. Rutland MSS*, i. p. 67); and another among the Hull Records for stay of proceedings before the Council.

[54] Kerly, Ch. 8.

but on an information laid before the Court by the Attorney for the Crown[55]. This information was grounded on charges put in by a "Relator", or informer, whose name must appear on the information, unless the Court gave leave for its suppression.[56] If the offence were some small trespass, the accused would be served with process to answer during the next session, but in two cases he might be required to answer *super visum*. The difficulty of enforcing the penal statutes "for want of whose due execution in the North parts frauds and deceits in Men of Trades and misteries and other errors oppressive to the Common weal much increased, to the general hurt of all men", led to an order being made during Huntingdon's presidency, that upon information of a breach of one of these statutes the offender should be called upon to answer *super visum*. By this order of proceeding the informers were prevented from making private composition with the offenders. The same order was followed in heinous trespasses, such as mayhems, batteries and bloodshed. In these cases, the offender, if on examination a good case were made out against him, was bound over to answer the grievance for the Crown at the Assize or the Gaol Delivery where proceedings in such cases were founded on the Attorney's information, and at the next session of the Council to answer the civil action of the party grieved. If the breach of the peace amounted to treason or felony, the information could, of course, be followed only by proceedings at Oyer and Terminer or Gaol Delivery; but other offences and breaches of the penal statutes which did not amount to felony were

[55] Instr. 1556, Art. 35, and onwards; cf. Reply to Charges in 1596, S. P. Dom. Eliz. cclix. no. 100.

[56] Order made by the Council, 9 Nov. 1568 (S. P. Dom. Add. Eliz. xiv. No. 42) cf. Demurrer of the West Riding J. P's in $159^{5}/_{6}$ (Addit. MSS. 14,030, f. 64, printed *Yorks. Arch. Assoc Rec. Ser.* iii), that the information varied 'from the common forms in this Court used, being exhibited upon the Relation of no person certain, against whom these Defendants, if the surmises of the said Information in the end of the suit, should prove untrue, might recover their costs'.

heard in the ordinary sittings of the Court, when the procedure was modified to a closer resemblance to that of Star Chamber, the dilatory replications and rejoinders being omitted.[57] Otherwise, the proceedings followed the same course in both civil and criminal cases.

It was the practice of the Court, rigidly followed, never to hear any cases except during the four General Sessions,[58] and to deal in vacation only with riots and great outrages.[59] While the Sessions lasted, the Court sat daily, Saturday afternoon being reserved for orders and the reading of the Book of Decrees. On that day also the President and Council announced in open Court what old cases they would hear during the following week, and on what days and at what times, the Clerk of the Court being at the same time instructed to inform the parties interested.[60]

For many years the work of the President, the Councillor or Councillors attendant on him, and the Secretary, during vacation was confined to (a) examining persons accused of crimes, felonies or breaches of the peace; (b) issuing process for execution of decrees made at the last session, for appearance at the next one, or for attachment on refusal of execution by the party against whom it had been awarded; (c) taking and cancelling recognizances for the peace or for justice at the suit of any person upon cause shewn. For the taking of these recognizances it was in 1537 suggested that one of the Council should be made a Master in Chancery,[61] and in 1538 direction was given that the Secretary

[57] Reply to Charges; cf. *Star Chamber Cases*, ed. S. R. Gardiner, (Camd. Soc.).

[58] Ib. (3). The Council had no difficulty in showing that their proceedings in vacation were final only in the case of debt, and even then only when the defendant filed no answer. Cf. Instr. 1616, Art. 34. The time was extended to 15 days in 1622 (*Temple Newsom MSS*, p. 22).

[59] The special commission of Oyer and Terminer empowered four of the Council, one being of the Quorum, to assess fines on all rioters; see App. IV.

[60] Harl. 1088. f. 18b; an Order made by the Lord President and Council, 5 May 1561.

[61] Draft Instructions for Norfolk, 1537.

should be so sworn (Art. 4), Audley, then Lord Chancellor, protested strongly against this course, and suggested that by way of compromise there should be granted to the Lord President and the Secretary a special commission to take recognizances as in Chancery.[62] The compromise was adopted and the commission was issued;[63] but in 1550 the original protest and the compromise were alike set aside, and when the Commission and Instructions were renewed for Shrewsbury, direction was given that the President and two of the learned Council, to whom the Secretary was afterwards added, should be sworn Masters in Chancery (Art. 7).

During Huntingdon's presidency, if not earlier, the Council began to grant summary process in vacation in three cases of special urgency:- on information of a breach of one of the penal statutes, in actions of debt upon obligations with penalties, and in cases touching possession of lands or goods. The proceedings then taken, however, were merely interlocutory, being confined to requiring the appearance of the defendant to answer *super visum*, and upon answer made either the case might be dismissed or a day might be given for hearing at the next Session.[64]

On the whole, the procedure of the Council was admirably adapted to the end in view; and the surest evidence for the necessity there was for a Court with the Council's power of proceeding on information to summary conviction is supplied by the contemporary acquisition in spite of the common lawyers of similar powers by the Justices of the Peace in all offences short of felony.[65] That these powers were open to abuse is obvious, and that they were abused by the Justices of the Peace, not only under Henry VII

[62] 2 Oct. 1537; *L. & P.* xii. pt. 2. No. 805.

[63] Pat. 31 Hen. VIII. p. 6. m. 14; Special Commission on the Northern Circuit to Llandaff and Uvedale to receive recognisances for appearances before themselves and the Council in the North, or any other Justices of the Circuit, and for good conduct and the keeping of the peace .

[64] Reply to Charges.

[65] Paley, *Law and Practice* etc. pp. xxvii-xxix.

but during the seventeenth and eighteenth centuries, there is only too much evidence to show. The absence of direct evidence either way does not prove the superiority of the Council to the Justices; but it is at least antecedently probable that the power of summary conviction was less likely to be abused by a bench of at least four men, most of them professional lawyers, sitting in open court, than by a single Justice, innocent of legal training, administering justice in his own private room. Even if the constitution of the Court had not made bribery difficult, the poverty of the suitors or the smallness of the amounts at stake usually made it impossible or absurd.

It is true that when the struggle with the Courts at Westminster began, the Council's procedure was attacked; but it would seem that the attack was made rather because of the resentment roused by the Council's governmental action, than because its enemies could adduce specific instances of unfair dealing or oppression. It is, indeed, inconceivable that Pym and Savile, doggedly bent on hunting Strafford to his death, would not have given prominence to any instance of oppression by the Council of which he was President, could they only have found one that would bear even the most cursory examination. We may take it therefore that the Council's procedure was condemned as a potential, rather than as an actual, instrument of oppression, and from political rather than judicial motives.

CHAPTER III.

The Court at York: its Jurisdiction.

(*a*) *Criminal.*

The Council in the North having been established in the first instance to maintain order and keep the peace, it was inevitable that it should at once assume the functions of a Court of Justice, both criminal and civil. The failure of the common law to adapt itself to the needs of the age having been the cause of half the disorder to escape from which the nation gladly accepted the Tudor despotism, the administration of justice according to the laws of the realm and good conscience, no less than the maintenance of order, was regarded as an essential part of good governance, and, as has been shown above, the judicial character of the Council was from the beginning strongly marked.

There is no difficulty in determining the basis of the Council's judicial authority, for it is clearly stated in the draft of Instructions for the Duke of Norfolk in 1537 that the Council is to have 'two commissions whereof the one shall be to hear and determine .... murder, felony and other like, and the other to hear and determine all ca(uses) .... by bill witness examination or otherwise by their discretion'.[1]

These two commissions may be compared, on the one hand with the commissions of oyer and terminer and of the peace given to Richmond's Council in 1525, and on the other with the two commissions under the Great Seal of England given to Llandaff in 1538 which were 'to furnish the said president and council in all things with authority

[1] Ap. V. ii.

sufficient and ready to execute justice as well in causes criminal as in matters of controversy between party and party .... by virtue whereof they shall have full power and authority in either case to proceed as the matter occurrent shall require'.[2] There can be no doubt that the second commission was the special commission of the peace issued to the Council in the North for Yorkshire only in 1530[3] and extended in 1537 to all the northern counties,[4] a reissue of which for Llandaff in 1540[5] was described by Coke as two authorities in one commission of oyer and terminer.[6] This commission was almost certainly identical, not only with the commission of the peace given to that Council in 1525, but also with the earlier commission given by Richard III to the King's Council established in the North parts in 1484. For, as that commission gave authority 'to order and direct all riots, forcible entries, distress takings, variances, debates and other misbehaviours against our laws and peace' (art. 5); as well as 'to hear, examine and order all bills of complaints' (Art. 4), save that the Council might 'in no wise determine matters of land without the assent of the parties' (Art. 6); so Llandaff's commission[7] gave the President and Council authority in the five northern counties, with York, Hull, and Newcastle, 'to enquire and to cause inquiry to be made by the oath of worthy and lawful men as by any other means that they might be better informed concerning all unlawful assemblies and conventicles, meetings, Lollards, confederations, misprisions, false accusations, trespasses, riots, routs, retainings, contempts, frauds, maintenance, oppressions, violence, extortions, and other misdemeanours, offences and injuries whatsoever, whereby the peace and quietness of our sub-

[2] Instr. 1538, Art. 11.
[3] Privy Seals, Ser. II. 630.
[4] *L. & P.* xii. pt. 1. No. 98; Titus F. iii. 94
[5] Pat. 31 Hen. VIII p. 6. m. 13.
[6] Coke, *Rep.* Pt. xii. f. 50.
[7] App. IV.

jects in the aforesaid counties, cities and towns is disturbed, etc. and to hear and determine the same according to the laws and customs of our Realm of England, or otherwise according to your sound discretion', to which was added, 'and also all actions real and personal, save concerning freehold, and (all) causes of debts and demands whatsoever in the aforesaid counties, etc. when both parties or either party is so burdened by poverty that he cannot conveniently pursue his right according to the common law of our Realm of England, to hear, discuss, decide and determine, likewise according to the laws and customs of our Realm of England, or otherwise according to your wise discretions'. The closing words might equally well be translated by 'the King's laws and good conscience' of Richard III's Regulations, and are reminiscent of the direction given to the Justices of Peace by the statute of 1360 to punish disturbers of the peace 'according to the laws and customs of the Realm and according to their good counsel'.

Save that from 1558 the Justices and Commissioners were no longer described as of the Peace, and were no longer required to proceed against Lollards, the form of the commission remained unchanged till March 1570, when the Commissioners were directed to hear and determine according to the laws and good conscience, in virtue, not only of the commission, but also of certain Instructions issued on 4 June 6 Eliz. and of certain others issued on 1 June 8 Eliz., which were to be held to have effect in law as if they had been there inserted and recited word for word,[8] and were required to proceed according to the use of the Court of Chancery. This precedent was followed in Huntingdon's commission of 15 Nov. 1582, and in Burghley's and Sheffield's commissions of August 1599 and July 1603 respectively ; but in 1609 the commission was shortened to a simple direction to the Council 'to examine, hear, dicide, do, follow, expedite, perform, and finally determine all

[8] Commission to Sussex, 16 March 1570 ; S. P. Dom. Add. Eliz. xviii. No. 10.

offences, suits, controversies, and causes as is limited and appointed by Instructions contained in a schedule annexed to these presents and signed by our hand'.[9] Henceforth, the Instructions as well as the commission were entered on the Patent Rolls, on which there remains an unbroken series of commissions from 1599.

In this respect Stuart practice is in strong contrast with Tudor; for as has been pointed out already, very few of the earlier commissions appear on the Rolls; none, in fact, before 1540. Down to 1537 the Council's special commission seems to have been regarded as just one of those commissions of oyer and terminer by which the Courts of Chancery and Star Chamber usually discharged their functions, and therefore as not calling for enrolment. From 1540, however, the Council in the North being now recognised as a separate and permanent court, the special commission was enrolled as a matter of course, although, being a standing commission like the ordinary commission of the peace, it was renewed only at the beginning of a new reign or when new powers were to be granted to the Council as in 1561 and 1599, new members being admitted as need arose by a letter under the Signet.[10]

Ample as was the special commission of the Council in the North, it was not the only, nor even the chief, basis of its criminal jurisdiction. Every President also received for himself and the Council a commission of oyer and terminer for all criminal causes including treason and felony, and another for gaol delivery, both current in the same counties and towns as the special commission.[11] Henry VIII had added a commission of the Six Articles,[12]

[9] Do. to Sheffield, 15 June 1609; Pat. 7 Jas. I p. 2.

[10] App. I.

[11] Titus F. xiii. f. 301 (251), a list of the commissions and warrants required for the Lord President of the Council in the North. This is not dated, but references to the Earl of Huntingdon indicate that the list was compiled in 1599 when the second Lord Burghley was appointed Lord President.

[12] *L. & P.* xv. No. 362. On 18 March 1540, Llandaff asked on behalf of the Council in the North for a commission to inquire of heretics according

and Elizabeth always included the whole Council in her Ecclesiastical Commissions for the Northern Province, in which the Lord President's name was next to the Archbishop of York's.[13] When the Council was no longer included in each of the ordinary commissions of the peace for the northern counties, it received one for each of the three Ridings, and a commission for Border causes grounded upon the statutes of 2 & 3 Ph. & M. and of 23 Eliz., execution of which was expressly given to the Lord President and Council.[14] Other commissions were issued from time to time in which at least some members of the Council, and always the President, were included. In every one of these Commissions, except that for Ecclesiastical causes, the Lord President's name stood first. This lends additional significance to the fact that throughout the Tudor period no other commission of oyer and terminer or of gaol delivery but that delivered to the President and Council was ever read in the northern counties, even for the Justices of Assize on that circuit.[15]

In effect, these commissions made the Council in the

to the statute of the Six Articles, for the city and shire of York, the town of Hull and the part of the Archdeaconry that was in Lancashire, as the commission only included Yorkshire. Under this commission two Sacramentaries who had been present at Anne Askew's execution were convicted in Dec. 1546, but they were pardoned on recanting (*ib.* xxi. pt. 2. Nos. 596, 639).

[13] On 25 June 1559, a commission for the visitation of York Province was issued to the Earls of Shrewsbury, Lord President of the Council in the North, Derby and Northumberland, Lord Eure, Sir Henry Percy, Sir Thomas Gargrave, Sir James Crofts, Sir Henry Gates, Edwin Sandys, D.D., Henry Harvey, L.L. D., Richard Bowes, Christopher Estoft, George Browne and Richard Kingsmill (S. P. Dom. Eliz. iv. No. 62). Browne and Estoft, two of the legal members of the Council in the North, were specially chosen to attend the visitors because of 'their knowledge of the Common Laws of the Realm' (ib. vi. No. 12). After the Ecclesiastical Commission came into existence, the whole Council was included in it as a matter of course, both in the 16th and 17th centuries; see note 11.

[14] Ib. This commission was granted for the first time in July 1593 to enforce 23 Eliz. c. 4, for fortifying the Borders and for enquiring into all decays since 27 Hen. VIII (1536) when the last presentment was made (S. P. Dom. Add. Eliz. xxxii. No. 81).

[15] S. P. Dom. Eliz. cclxxxiii. No. 42; cclxxxiiia, No. 82. Cf. *Cal. Bord. Pap.* ii. No. 227, Eure to Burghley, 1576, 'The only Commission of Gaol

North the supreme court of justice north of the Trent, exercising the whole of the Crown's criminal and equitable jurisdiction, with its ecclesiastical jurisdiction to boot. No other court in the kingdom had power comparable to this, and it is little wonder that the Courts at Westminster betrayed such jealousy of a court beside whose jurisdiction their own seemed limited indeed.

So far as the Council's criminal jurisdiction was concerned, its authority was derived almost entirely from the general commission of oyer and terminer, and the chief value of the special commission was to enable the Council, when dealing with offences that came short of felony or treason, to use the quicker and more efficient procedure of the Lords sitting in the Star Chamber. Otherwise it differed from ordinary courts of oyer and terminer in three particulars only. First : it met more frequently, sitting as a criminal court at the close of each of the four general sessions that it was directed to hold for the hearing of causes between party and party.[16] Yet the Justices of Assize visited Yorkshire only twice, and the other northern shires only once a year ; in other words, the Justices of Assize were not necessary members of the Council even for criminal causes.[17] Secondly : the Council had an advantage possessed by no other Court before 1554[18] of being able to examine

Delivery in the East and Middle Marches is the general one for the North, with the Council at York'.

[16] Instr. 1538, Art. 20.

[17] E.g. in. 1557 the Justices of Assize were present only at the Gaol Delivery, the Council keeping the Sessions of Oyer and Terminer alone (S. P. Dom. Add. Mary, viii. No. 2).

[18] In this year it was exacted that 'when any person arrested for manslaughter or felony, or suspicion of manslaughter or felony, being bailable by the law, is brought before any two Justices of the Peace, they are to take the examination of the said prisoner and the information of them that bring him of the fact and circumstances thereof, and the same or as much thereof as shall be material to prove the felony shall be put in writing before they make the bailment . . . All such as do declare anything material to prove the said murder, manslaughter, offences or felony or to be accessory or accessories to the same as is aforesaid are to be bound over to appear to give evidence at the Court of gaol-delivery' (1 & 2 P. & M. c. 13).

both the accused and the witnesses before a criminal case came before it for trial. Thirdly: the Council, like King's Bench,[19] could proceed either on indictment or on information for the Crown laid before it by the Attorney for the Crown. The value of these three advantages possessed by the Council over other courts of criminal justice is well illustrated by a letter written to Burghley in 1596 by two members of the Council in the North.[20] Owing to the disordered state of the Marches, especially of the Middle March, they had been sent to Hexham to help the Warden to hold a Warden Court and to hold a Gaol Delivery on their own account. When all was over, they reported as follows: 'We find that the gentlemen, to the great overthrow of justice, do too much favour their blood. The jurors refuse to do their duties for fear of feeds (feud). The talesman (as they term him who should give in evidence) either will not be seen or else composition made, and so no proof is made, whereby the inquest taketh occasion to acquit very notorious offenders; which might be amended — as we think and did advise them — by the strict examination taken by justices of the peace at their first apprehension, while the party grieved earnestly seek for justice, thereupon good bonds to be taken for present prosecution. And likewise, we think that holding their gaol delivery more often would much avail to the redress of those abuses, for time taketh up and compoundeth many murders and felonies'.[21] In short, they recommended that in the Marches,

[19] Blackstone, iv. p. 310.

[20] Purefy and Ferne to Burghley, 19 April 1596; *Hatfield Cal.* vi. p. 48.

[21] There is in another letter written at this time by Eure, Pepper, Purefy and Ferne a good illustration of the difficulties attending the execution of justice in the Marches at the close of the 16th century. At a Warden-court, Heron, a gentleman, was so friended by the jury that for a night and two days no verdict would be given; so for fear of the jury's health — no meat or drink being given — Eure withdrew the prisoner from them and received their half verdict of those they had agreed on. He acted by the advice of the Queen's Counsel, although contrary to the common law (*Cal. Border Papers* ii. No. 249).

which the Council in the North had ceased to visit, there should be adopted the same policy that was even then being pursued with signal success in Yorkshire. Their advice was taken, and the Council in the Marches,[22] known after the Union of the Crowns as the Commissioners for the Middle shires,[23] through quarter of a century's labours finally reduced the Marches to order.[24]

As a court of justice, the Council's activity was primarily determined by the interests of the Crown. It was therefore only natural that as those interests changed or developed, the Council should from time to time be directed to make special efforts to seek out and bring to justice those guilty of certain offences. Thus, during Henry VIII's reign the first necessity was the restoration of order ; so in the earliest Instructions the Council was reminded that it was established for the quietness and good governance of the people, and armed with power to deal swiftly with all crimes, oppressions, spoils and disturbances of the peace, and with authority to fine all convicted of riot. The giving of livery and the retaining of the king's subjects being responsible for much of the prevalent disorder and for the failure of the ordinary courts to cope with it, the Council was directed to give special care to enforcing the statutes against livery and retaining, and it was especially bidden to punish all seditious speeches and rumours, which, not being treason, were to be punished by setting in the pillory, cutting off ears, wearing papers, or otherwise at the discretion of the Court.[25] Required at every assembly to enjoin strict observance of all His Majesty's laws, especially the laws touching religious belief and observance, it was given a special commission to enforce the Statute of the Six Articles.[26]

[22] 43 Eliz. c. 13, an Act for the Better Government of the Marches.

[23] Hatfield MSS. cxvii. No. 111 ; 13 Sept. 1606.

[24] It was only at Charles I's accession that the commission was allowed to lapse.

[25] Commission of 1530 ; Instr. 1538, Arts. 14, 16, 21, 22.

[26] *L. & P.* xv. No. 362.

Within the next twenty-five years the Council had justified its existence by suppressing two incipient revolts,[27] and had been so far successful in restoring order that within its jurisdiction serious crime had been reduced to what were for the age reasonable proportions, and retaining had become rare enough for it to be possible to deal with it by the common law method of inquisition and verdict, although vigilance was still necessary.

Nevertheless, the Council in the North remained in a special sense the guardian of public justice and the public peace. The low standard of honour in public life that characterised that age made it very necessary that the Council should have authority to correct the shortcomings of local magistrates, and should be empowered and required to give particular attention to such offences against public justice as the embezzling or defacing of any bills, pleadings, orders, rules, proceedings or records of that Court or of any other within its commission, escapes, rescues, maintenance, champerties, embraceries, extortions, briberies, oppressions,[28] vexatious conspiracies, the compounding

[27] Gargrave to Cecil, 29 June 1568; S. P. Dom. Add. Eliz. xiv. No. 15. The first was the plot to kill Llandaff and seize Pontefract in 1541 (*L. & P.* xvi. No. 733); the second was the rising at Seamer in Yorkshire in August 1549.

[28] As the distinction between some of these offences is not always borne in mind, it may not be amiss to quote Blackstone's definitions, (iv. pp. 135 ff.)

Maintenance is 'officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party with money or likewise, to prosecute or defend it'.

Champerty is 'a species of maintenance, being a bargain with a plaintiff or defendant *campum partire*, to divide the land or other matter sued for between them, if they prevail at law'. Embracery is 'an attempt to influence a jury corruptly to one side by promises, persuasions, etc.'

Extortion is 'the unlawful taking by a public officer, by colour of his office, from any man or thing of value that is not due to him, or more than is due, or before it is due'.

Bribery is 'the taking of an undue reward by a judge or other person concerned in the administration of justice'.

Oppression is 'the tyrannical partiality of magistrates in the administration and under colour of their office'.

of informations, forgery, perjury and the negligence of public officers. Most of these offences were known to the common law, even in the thirteenth and fourteenth centuries, and many statutes had been passed for their punishment. Nevertheless, the common law dealt with them most inadequately. The only conspiracy it knew was the agreement of two or more persons to take criminal or civil proceedings falsely and maliciously against an innocent person. Forgery also was an offence known to the law; but, apart from the forgery of the king's seal or coinage, which was treason, the only forgery punishable at common law was reliance upon a forged document in a Court of Law. So too with perjury, of which the only form punished by the Courts before 1563 was the perjury of jurors. Even in respect of the other offences which were more adequately dealt with by the common law, the cause of justice was hindered and often defeated by the cumbrous and expensive procedure of the ordinary courts.[29] Here then was a fine field for the exercise of equitable justice by the King's Council in the North; and these, as being offences not only against public justice but also against public peace, to the breach of which they were direct incentives, the Council was by its special commission authorized to hear and determine according to the laws and customs of the realm and according to their discretion. Such of these offences as were not included in the Commission of 1530, were added in the Commission and the Instructions of 1556 and 1561. These were the giving of false witness, wilful perjury and the forging of false deeds; and it is very significant that the statute of 1563, which enabled the Courts of Record not only to compel the attendance of witnesses, but also to punish the giving and the suborning of others to give false witness, contained a proviso that nothing in the Act should 'in any wise extend to restrain the power or authority given by Act of Parliament made in the time of King Henry the Seventh, to the Lord Chancellor and others

[29] Holdsworth, iii. pp. 284, 313-4.

of the King's Council to examine and punish Riots,heinous Perjuries and other Offences and Misdemeanings .... nor to restrain the power and authority of the Lord President and Council of the Marches of Wales, or of the Lord President and Council in the North, nor of any other Judge having absolute power to punish Perjury before the making of this Statute ; but that they and every of them shall have and may proceed in the punishment of all offences heretofore punishable, in such wise as they might have done or used to do before the making of this Act to all purposes, so that they set upon the offender or offenders less punishment than is contained in this Act'.[30] Thus the Council, as protector of public justice, was enabled to imitate the Court of Star Chamber both in safeguarding the subject against the abuse of legal forms, and in developing and generalising the law of conspiracy, forgery and perjury, to the great advantage of the people.

As keeper of the public peace, the Council naturally had cognizance of riots, routs and unlawful assemblies, which it was empowered to punish by assessing fines on offenders, the spreading of false news and seditious tales and rumours against the king or any of the nobility or any placed in the Privy Council or in the Council in the North, and the publication of any libel as likely to cause a breach of the peace.[31] Here again all the offences were known to the common law, although the courts of record took no cognizance of defamation, pure and simple, which was left to the local courts. For the punishment of false news and seditious tales against the king and the nobility by fine and imprisonment, provision had been made by the first Statute of Westminster.[32] In Richard II's reign, when the power of the nobles had increased to such an extent that any ill feeling among them might well breed civil war, authority had been given to the Council to punish the

[30] 5 Eliz. c. 9. s. 7.

[31] Instr. 1538, Arts. 14, 16.

[32] 3 Edw. I c. 34.

spreaders of seditious rumours whose authors the speakers could not bring forward.[33] What the practice of the Council was in such cases is indicated by the Instruction given to the Council in the North to punish such offences by setting in the pillory, cutting off ears, and wearing of papers.[34] For the infliction of these punishments statutory authority was given to the Justices of Peace as well as of Oyer and Terminer in the Act of 1554 against seditious words, re-enacted in Elizabeth's first Parliament.[35]

It was as the keeper of the public peace that the Council had in Henry VIII's reign been required to admonish the people to obey the laws touching religious belief and observance, and it was inevitable that it should be specially required to give effect to the Elizabethan settlement. Religious belief and observance were assuming a new and more serious political significance, and it was obvious, almost from the beginning of the reign that if the government wished to give effect to its religious policy North of the Trent, it must employ some other agent than the Justices of the Peace. Therefore in the Instructions given to the Council in the North from 1558 onwards, increasing stress was laid on the Council's obligation to aid the Archbishop and Bishops in enforcing the laws touching religion and the divine service.[36] In 1561 a more explicit Instruction was given to aid the Bishops in all matters of religion, and especially 'for the due observation and execution of all things set forth in the Book of Common Prayer and Administration of the Sacraments and in the Injunctions as also for the apprehension, correction and punishment of all such persons as shall contemn and disobey the same Bishops, ordinaries or commissioners', and 'that the said

[33] 12 Ric. II c. 11.

[34] Instr. 1538, Art. 14.

[35] 1. & 2 P. & M. c. 3 ; 1 Eliz. c. 6. These two statutes were in 1571 replaced for the term of the Queen's life by a more severe Act (23 Eliz. c. 2) ; but on her death, the earlier Acts recovered their original force.

[36] Instr. 1558, Art. 24.

Bishops and ordinaries be assisted in the punishment of such as do daily marry unlawfully and against the laws of God and the Realm. And of such others as notoriously live and continue in Adultery to the slander and infamy of God's people.[37] The Council was thus required to undertake not the least important of the duties of the expiring Church Courts,[38] and for this purpose it was always included in the Ecclesiastical Commission for the Northern Province.

So far as the penal statutes against priests, recusants and Jesuits were concerned, the commission of oyer and terminer gave the Council all necessary authority ; and under Huntingdon they were executed with good will and without special direction. His successor, Hutton, Archbishop of York, saw things differently. A kindly and tolerant man by nature, he was too broad-minded to be a persecutor, and the recusancy laws were little enforced in his time. His slackness in this respect brought about his supersession by Lord Burghley, who was admonished 'to labour the stay and reformation of back-sliding in Religion', and given authority to take order that all Bishops and other officials in their visitation should take presentment of recusants by oath of Sidesmen, and certify them to the President and Council. Moreover, a new clause was added to the Instructions directing the Council to repress Jesuits, Seminary and Popish Priests, and their receivers and abettors, and empowering it to issue warrants for their apprehension.[40]

The penal laws against recusants were not the only ones enforced by the Council. As a court of oyer and ter-

[37] Do. 1561, Art. 39. The Earl of Westmorland had just defied the northern Bishops by marrying his deceased wife's sister, justifying his action by arguments from Scripture too dangerous for Elizabeth to admit their validity. For the rest, Pilkington was discovering a rather appalling laxity of morals in his diocese of Durham (Border Papers iv. No. 285).

[38] From the beginning, the Council dealt with matrimonial suits ; e. g. Sir William Bulmer's desertion of his wife in 1542 (*A. P. C. 1542*, pp. 46, 81-2, etc.), and in 1551 Holgate's case (*Ib. 1550-52*, p. 427).

[40] S. P. Dom. Eliz. cclxxii. No. 1.

miner it had jurisdiction in all matters concerning public welfare as well as in those concerning public justice and public peace; and as we have already seen,[41] it was instructed in 1561 to give special care to the execution of the ever-growing number of statutes, most of them penal, designed to advance the national welfare. Some of the learned Councillors, however, expressed a doubt whether their commission of oyer and terminer was ample enough for the purpose, so the judges were consulted.[43] It is probable, indeed, that this reference was in part the occasion of the Queen's command that all the judges should assemble at the close of Michaelmas Term in 1564 to devise how the nine penal statutes, namely, those concerning tillage, servants and labourers, apparel, armour and horses, artillery and unlawful games, relief of the poor and vagabonds, roads highways and bridges, and forestallers and regrators, should be best put in execution. The question was raised whether, an offence being created by statute which was not one at common law, and a penalty being appointed in money to be recovered in any of the Queen's courts of record by action of debt, this offence and action might be punished and determined by the Commissioners of Oyer and Terminer in the country. By the opinion of all the Judges but three, it could not, but only in the four ordinary Courts of Record at Westminster; but if no court were appointed it was otherwise.[44] It is therefore clear that the Council in the North could execute nearly all the penal statutes; but to prevent question, the execution of two of the most important, namely, the statute of Labourers in 1563, and that for the regulation of the export of corn in 1571,[46] was expressly given to the Lord President and Council in the North in all the counties within the limits of their commission.

[41] Cunningham, *Eng. Ind. & Com.* i. pp. 478-482.
[43] 14 May 1562; Bord. Pa. vi. No. 40.
[44] Dyer, *Rep.* ii. p. 236a, Mich. 6 & 7 Eliz.
[46] 5 Eliz. c. 4; 13 Eliz. c. 13.

The execution of the penal statutes by the Council could at best be only a temporary expedient. The Council indeed ordered its practice in dealing with the informations laid before it so as to secure the punishment of offenders against these statutes and prevent compounding; yet distance alone limited its effective action to the neighbourhood of York, and elsewhere many of the statutes must have remained inoperative. The history of Poor Relief legislation shows that nothing short of compulsion could secure execution of the government's policy,[47] and even in York, Huntingdon had some difficulty in giving effect to it. Among the clothing towns nothing was more difficult than to enforce the statutes regarding the woollen industry, and nearly sixty years after Thomas Cromwell had sent out his commissioners for the flocking of cloths the Lord President was receiving directions to inquire into the prevalence of the offence, and to break up the stones and burn the wooden rollers found.[48] Clearly, the most important task that awaited the Council was to enquire into the offences and defaults of all Sheriffs, Justices of the Peace, Mayors, Stewards, and other officers and ministers of justice, and to punish them by fine and amercement, or otherwise by discretion, and to bind notable offenders to appear before the Lords in the Star Chamber.[49]

The ability of the Council in the North to act as the guardian of public justice, the public peace and the public welfare, was completed by the powers in relation to the apprehension of criminals and the conduct of the preliminary enquiry in criminal cases which it derived from its peculiar procedure. Until the beginning of the seventeenth century the three Councils, of State, in the Marches of Wales, and in the North, alone had the power to issue a warrant for apprehension of persons suspected by others. Coke, in denying that the Justices of the Peace could issue

[47] Leonard, *Hist. Eng. Poor Relief.* passim.
[48] *A. P. C.* xx. p. 163, Dec. 1590.
[49] Instr. 1556, Art. 33.

warrants to attach persons suspected by others of felony,[50] was simply enunciating the accepted common law doctrine.[51] So necessary, however, was the practice that Hale, displaying sounder sense than law, defended its legality, saying, 'My Lord Coke in his jurisdiction of Courts hath delivered certain tenets, which, if they should hold to be law, would much abridge the power of justices of the peace, and give a loose to felons to escape unpunished in most cases'.[52] That the power was a dangerous one the history of the writ of *habeas corpus* shows, but it may be taken as certain that on the whole it did more good than harm north of the Trent, especially in conjunction with the Council's power to conduct preliminary inquiry in criminal cases. This power, not conferred on Justices of the Peace till 1554, the Council shared with the Coroner, who also could take depositions and bind over witnesses to appear at the trial; but the Coroner's power was already declining,[53] and the Council had the advantage of being able to secure the presence of witnesses and to punish them for perjury should their guilt in that respect be established.

Whatever doubt might be cast on the legality of the Council's procedure, the legality of its criminal jurisdiction, based as it was on the general commission of oyer and terminer,[54] and supplemented in Yorkshire by the commission of the peace, was unassailable. Individual judges might resent the inferior position given to the Justices of Assize when sitting as Justices of Oyer and Terminer in the Northern Circuit,[55] but even Coke would not deny the Council's jurisdiction as a Court of Oyer and Terminer. When he denounced the Council for enforcing certain of

[50] *Fourth Institute*. pp. 176-8.

[51] Established by a decision of 14 Hen. VIII.

[52] *Pleas of the Crown*, p. 107.

[53] Holdsworth, i. p. 46.

[54] It is significant that it was to the chapter on the Justices of Oyer and Terminer 'in Crompton's' *Jurisdiction of Courts* that Hales added his notes concerning the Council in the North.

[55] Pp. 351 ff.

the penal statutes, notably the Tillage Act of 1597, he did so on the ground that by the Acts themselves execution was reserved for certain Courts.[56] That the execution of the Tillage Act was given to the Justices of the Peace and to the Justices of Assize under that name instead of as Justices of Oyer and Terminer, was probably due to a draftsman's error. That Coke denounced the Council for executing this statute, and said nothing of its more important jurisdiction in treason, and felony, is the surest proof alike of his willingness and of his inability to challenge the Council's criminal jurisdiction in general. As a matter of fact, it went practically unchallenged till the Council's association with Wentworth and with the efforts of the Privy Council to make the system of local government more efficient roused the opposition of the Yorkshire gentry to what they regarded as merely an instrument of royal despotism; and even then it was to the Council's procedure rather than to its criminal jurisdiction that exception was taken.

[56] Coke, *Rep.* xii. p. 56.

CHAPTER IV.

The Court at York: its Jurisdiction.

(*b*) *Civil.*

Lambard, in his account of the English Law Courts, remarks that the two Councils of the Marches and of the North 'be Courts of Equity in the principal jurisdiction, although they do withal exercise other powers by virtue of other several commissions that do accompany the same'.[1] Although those most familiar with the Council's work preferred to lay stress on its jurisdiction as a Court of Oyer and Terminer, there is much truth in the remark; for, as order was established north of the Trent, so the Council's civil jurisdiction became more important.

That jurisdiction was derived entirely from the special commission of oyer and terminer which directed the Council to hear, and discuss, decide and determine according to the laws and customs of the realm or according to good discretion, all actions real and personal, save concerning freehold, and (all) actions of debts and demands whatsoever when both parties or one party is so burdened by poverty as to be unable conveniently to pursue his right according to the common law of the kingdom and to take and attach and punish according to discretion all refusing to appear or to obey their awards and decrees.[2] In effect the commission gave the Council a jurisdiction in civil cases that was practically identical with that of a barony court,[3] save that instead of its competence being restricted to

[1] *Archeion*, p. 232.

[2] Commission of 1530; this clause was never altered.

[3] Holdsworth, ii. pp. 318 ff.

cases in which the amount at stake did not exceed 40s, it was provided that it should have jurisdiction only when either of the parties was so poor that he could not seek redress in one of the courts at Westminster. It is, perhaps, not without significance that when the Lords of the Council in 1599 called before them a case arising out of a scene at Quarter Sessions between two Yorkshire gentlemen which had been begun before the Council in the North, Lord Burghley protested that the credit of the Council would soon be dissolved, 'and the President shall be little more than a steward of a court baron'.[4]

In fact, every kind of case that the court baron dealt with seems to have been heard before the Council in the North. As in the court baron, so before the Council, actions for debt, for breach of contract or for defamation, together with cases arising out of copyhold or customary tenure formed the greater part of the civil business. It is probable that the common lawyers owed their exceptional position in the Council to a desire on the part of the Government that the Council should, so far as was agreeable with equity, decide the cases before it in accordance with the common law. It was, however, inevitable that the tendency already noticeable in the courts baron to determine on equitable principles the cases before them, should be emphasised by the Council in the North and that its remedies and practice should approximate more and more closely to those of Chancery.

From the beginning the Council was instructed to award costs and damages to either party, and in case of spoil, extortion, or oppression to order restitution, or punishment when restitution was impossible.[5] The Council also gave relief where a legal advantage had been unjustly gained by fraud, accident or mistake, and refused to admit the outlawry of the plaintiff as a bar to action.[6] In cases

[4] S. P. Dom. Eliz. cclxxiii. No. 26; 12 Nov. 1599.

[5] Instr. 1538, Art. 25.

[6] Coke, *Rep.* xii. p. 54.

where a right was recognised at law, but was imperfectly protected or secured by the Courts, the Council possessed a protective and administrative jurisdiction through its peculiar procedure, which enabled it to secure quiet possession, enforce dower or partition, end rival claims by arbitration, take accounts, decree specific performance of a contract, and by discovery aid proceedings at law.[7] The disappearance of the Council's Registers leaves us in ignorance of the way in which the Council dealt with the majority of the cases, and of the principles that governed its decisions. Only in a few cases have we even a glimpse of the rules by which the Council determined the application of any of the remedies at its command. Fortunately, these include examples of the most numerous groups of cases taken before the Council.

By far the most important cases were those arising out of tenant-right.[8] The very great social and economic importance of tenant-right has already been indicated, as well as the prominence given to it in the earlier Instructions which directed the Council to take order for the redress of enormities in those who were 'extreme in taking gressoms and overing of rents'.[9] Even when the events of 1549 had secured the withdrawal of this Instruction, the Council continued to watch over the interests of the tenants and entertain cases touching copyhold and tenant-right.

The fault did not always lie with the landlords for if they often refused to admit their tenants upon death or alienation without fines arbitrable at their will, tenants many times claimed 'to pay fines certain for their admission were the same were arbitrable at the will of the lords'.[10] During Elizabeth's reign a new cause of contention appeared.

[7] P. 189. Cf. claim that depositions before the Council should be received as evidence in other courts, a claim admitted so late as 1594 (Hobart, *Rep.* (1650 edn.) p. 109 ff.).

[8] Lans. 86. No. 17; Feb. 1598.

[9] Instructions to Norfolk, Jan. 1537 (*L. & P.* xii. pt. 1 No. 98), and Instr. 1538, Art. 23.

[10] S. P. Dom. Eliz. cclix. No. 100; Ap. VII.

Throughout the north the customary tenants, besides paying fines on death or alienation and doing suit at the lord's court, were bound to ride to the Border at the lord's bidding ;[11] but during the long peace after 1560, this service fell into desuetude, and many landlords began to claim that these tenants held at will.[12] The result was that of the thousand cases yearly determined by the President and Council at the close of the reign, the greater number were tenant-right cases.[13]

In the absence of the Council's Registers, we can do no more than hazard the opinion that the Council must have had no small share in determining the law concerning tenant-right as it was enunciated by Chancery and the Common Law Courts in the seventeenth century. At least, in one important case belonging to the year 1576 the common law of a later period was certainly anticipated by the Council. In that year the Privy Council[14] referred to the decision of the Lord President and Council in the North a quarrel between the Dean and Chapter of Durham and their customary tenants, who claimed to hold by tenant-right, whereas the Dean and Chapter said that they were tenants at will. The Council in the North decided that as the tenants had formerly accepted leases for 21 years, they had lost their tenant-right. The harshness of this decision, however, was tempered by the Privy Council which, probably on the advice of the Northern Council, ordered that, as their tenure involved the burden of military service against the Scots, no man should be expelled, provided they acknowledged that their tenancy was by favour, not by right, and that on death, the heir or the widow's second husband should pay a fine of two or three years' rent, but not more. An agreement to abide by this decision was signed and sealed by the Dean and Chapter and sent

[11] Humberston's Survey.
[12] Calig. B. ix. 6.
[13] See note 8.
[14] *A.P.C.* ix. pp. 90, 140.

to the Privy Council, a record being kept 'and enrolled in the office of the Lord President and Council in the North, where the controversies are most likely to come in question'.[15] In question they did come almost immediately,[16] for the prebendaries were bent on securing a fine of four years' rent, and objected to the leases of the prebends, which had been made without proviso of redemption by the prebendary on a year's warning and were therefore, as they contended, made void by a statute of 1571.[17] Yet a valuable precedent had been set, and the decision that the acceptance of a lease destroyed tenant-right was at once accepted as law. No less interesting is the agreement signed by the parties; for the limitation of the fine to two or three years' rent, but not more, is not only reminiscent of the commons' demands in 1536 but anticipates the decision adopted by the law courts in the seventeenth century that two years' value was a reasonable fine.[18]

To these cases as arising out of unfree tenures, must be added the not infrequent controversies between the heirs of copyholders; or between the heir and the purchaser. There is, however, a notable distinction, in that the decision in tenant-right being in equity was regarded as final; where as in cases of possession, the Council after hearing the title of both parties recited, used to establish possession where the best right appeared, only until the other party should recover the possession either at the common law or in the court of the manor. If any doubt or question arose

[15] Lans. 43. f. 48.

[16] S. P. Dom. Eliz. xxv. Nos. 7-11.

[17] 13 Eliz. c. 10.

[18] Ashley, *Econ. Hist.* i. pt. 2. p. 284. Sir Thomas Egerton in Mich. 1599 in the case of Thwaites Manor declared, 'Tenure by tenant-right as it is usual towards the Borders of Scotland shall not pay any uncertain fine or income at the change of the lord by alienation but by death, which is the Act of God; for otherwise the lord might weary the tenant by frequent alienations; but it may be fine uncertain upon the alienation of the tenant as well upon death as descent, for that it is the act of the tenant and in his power' (Cary, *Rep. in Chancery*, p. 4).

touching any custom of the manor, then the case was referred for trial in the manor court, with such precaution against partiality to the steward or the jurors, as might seem necessary, cases concerning Crown copyholders being remitted at the desire of the defendant to the Exchequer, Duchy of Lancaster or other Court, as the case might require.[19]

On similar principles the Council dealt with suits for the possession of freehold or leasehold land, although these, unlike copyhold, were determinable in the Common Law Courts, and the Council was expressly forbidden to determine cases concerning freehold. This prohibition was interpreted, and probably rightly, as merely forbidding the Council to determine finally in such cases.

The Council could indeed claim that, as the keeper of the public peace, it had a peculiar right to deal with all cases of possession, since these were a fruitful source of riots and breaches of the peace. To break into a park and hunt the deer, or to cut down and carry off wood and underwood, was a not uncommon way of beginning proceedings for the establishment of a title to freehold.[20] As the actual offenders in such cases, being mere agents, were usually poor men, there was a serious risk that if such cases waited till the ordinary sessions, the lands and goods might be wasted and their issues consumed by persons not able to make recompense. Therefore the Council was accustomed, on receiving complaint of forcible entry during vacation, to order immediate quiet possession or otherwise appearance *super visum* to shew cause why it should not be given.[21] Their decision then was determined by certain considerations : first, if a man who had long been in quiet possession were suddenly disturbed, the Council would take order that his quiet possession should be established until, upon the case being heard in open court, the possession

[19] See Ap. VII. p. 516.

[20] Baildon, *Chapters in the History of Goldsborough*, p. 5.

[21] See Ap. VII. p. 515 ; cf. the case of Easington Parsonage

might be established where the best right seemed to lie until the right itself might be tried at common law; secondly, in case of dispossession by riotous force and violence, after continuous and quiet possession for three years next before the expulsion, the Council would award letters of commission to the Justices of the Peace near the scene of the forcible entry, commanding them to execute the laws against forcible entries and give possession to the party having the right thereto; thirdly, if after such restitution there were entry upon entry and riot upon riot, then letters would be issued to the Justices to keep the party in possession, and if that failed, then the Council would call the parties before them and urge them to allow the possession to be sequestered to some indifferent person either chosen by the parties or appointed by the Council, until order were taken for the establishment of the possession.[22] In 1609 the Council's practice in these matters was confirmed by the Instructions (Art. 24), which, nevertheless, imposed a further restriction that the dispute must not be between Lessor and Lessee or their assigns, and with the provision that if the plaintiff failed to prove force or continual vexation or disturbance, then the case should be dismissed with good costs to the defendant unless matter of equity were alleged. Equity being alleged, and the plaintiff being without remedy at common law, the Council should hear and determine as in Chancery.

Although the Council in giving possession after hearing always reserved to the parties their liberty to have the right tried at common law if either of them should be so disposed, yet it could boast that for the most part it so ended all controversies between the parties that neither side afterwards took the case to common law.[23] Probably in the

[22] In illustration see the contest between Lady Anne Clifford and her uncle, the Earl of Cumberland, for the possession of the lands of her father, the late Earl (Hist. MSS. Rep. xii. Ap. Pt. vii, *Fleming MSS.* p. 13; *Proc. Archae. Insl. York.* 1846, 'The Memorial of the Life of Lady Anne Clifford').

[23] S. P. Dom. Eliz. cclix. No. 100.

majority of these cases there was no case to sue at common law; but even when it was otherwise, a possessory action before the Court at York was such a cheap and expeditious way of settling various matters on which the possession of land hung, that many cases were brought before the Council which ought to have been sued at common law. Thus, Leonard Dacre in 1566 sought a declaration of his right to part of the Dacre lands, and did in fact establish an entail of them to the heir male, by means of a possessory action in the nature of a replevin by English bill before the Court at York.[24]

More often, probably, the possessory action followed a forcible entry, as in a case brought in June 1567 by John Rotherfurth of Middleton Hall against Richard, William, George, and Roger Rotherfurth and others 'for the right to the manor of Middleton Hall, and for entering to the same in most riotous manner, being weaponed with inlawful weapons, (lances, staves, spears and bows, with swords and daggers), and also for the hurting of one gelding of the said informer, which manor the plaintiff claims to be seised of, in fee, as brother and heir of Thomas Rotherfurth, deceased'. From a summary of the pleadings given in the decree, it appears that Roger Rotherfurth claimed the manor as son of Thomas Rotherfurth and his wife Margaret Selby. It was proved, however, that when Thomas married Margaret, he was already married to one Jennet Bydnall, in whose lifetime were born his sons George, now deceased, and Roger, the claimant, who were therefore bastards and could not inherit. Therefore it was ordered by the Vice-president and Council that the informer should have and enjoy the premises without disturbance, or interruption, and that the defendants should pay him 53s. 4d. for his damages, and also 20s. for his costs and charges; and also they should pay £30 to Anthony Thorold, Esquire, the Queen's Attorney in the North parts, for a fine.[25]

[24] P. 200.

[25] *Archae. Aeliana,* vii. p. 137 *ff.*

With the injunctions to quiet possession pending trial at law or before the Council may be taken commissions to set out dower, and suits to determine boundaries. The Council, when accused of exceeding its commission by receiving bills of equity for widows' thirds, could not deny that in so doing it was meddling with freehold which it had expressly been forbidden to touch. It excused itself on the ground that such cases were very rare, not three a year, and that the bills were presented by persons of the meanest estate and calling, such as for the most part were unfit to follow the common law. Further, such suits were proceeded in only if there were in the Answer no plea allowed in 'bar of the right of dower'. Then, the possession of the husband being admitted, by the assent of the parties the Council would authorise commissioners assented to by them to divide and set forth a third of the lands in question.[26] So too, the Council would appoint commissioners to survey boundaries at the suit of the parties, as those between the shire of the City of York and the shire of York were set forth in 1561.[27]

Next to tenant-right and possession, the largest number of cases seem to have been actions for debt both upon obligations with penalties, and upon leases. This seems to have been due chiefly to the popularity of the Court with merchants and traders, to whom the Council readily granted in vacation summons to pay or shew cause *super visum*. The debtors were equally willing to admit its jurisdiction, since in debts upon obligation with penalties the Council gave only the principal debt, never the penalty, to recover which the creditor must follow the slower and more costly course of the common law.[28]

Hardly less important were the 'debts upon leases for years or at will', that is, for arrears of rent. As yearly rents were usually very small in the North, so that if sued for

[26] S. P. Dom. Eliz. cclix. No. 100.

[27] Y. H. B. xxiii. f. 20b.

[28] S. P. Dom. Eliz. cclix. No. 100.

at Westminster the charge and trouble both to Lessors and Lessees would be very heavy and often would far exceed the value of the rent in demand, it was customary to sue for such arrears before the Council. Again, the Instructions of 1609 in giving authority to this long established part of the Council's jurisdiction, imposed certain restrictions on its exercise (Art. 27); (1) the sum sued for must not exceed £40; (2) neither the title of the lease, nor the power and interest of the Lessor must be called in question, (3) the only question at issue must be whether the rent demanded has or has not been paid to the party who demanded it.

One of the very few surviving orders made by the Court at York was given in an action for debt between the Mining Company created by Letters Patent in 1561 and incorporated in 1568 [29], and certain of the Commons of Cumberland. The Company was constantly in difficulties and could hardly pay its way, with the result that in February 1575 some of the country people who had done work for it sued the Governor, Daniel Hochstetter for payment.[30] The result was recorded in the following order:[31]

"The Lord President's order between the Mineral Company and certain of the Commons of Cumberland, for sums owing them. Act at York xiii die Aprilis 1575.

Whereas John Gaytskerthe, the Bailiff of Crysedale in the County of Cumberland, hath exhibited unto me a Supplication in the names of divers the inhabitants of that country to whom Daniel Hochstetter (as Governor of the Mines royal) is sundry ways indebted. And having therewith received a letter from the said Daniel wherein he offereth satisfaction of those debts at certain days. I having considered both parts and the want wherein the same works now stand, tending their continuance and the poor people's surety (who refer themselves to such order as shall be

[29] Cunningham, *op. cit.* ii. p. 59.

[30] Lans. 19. f. 134.

[31] Ib. f. 210; a certified copy of the order.

determined by me to be done in those causes) I do order and appoint that till such sums as are owing to the said country people at this present day by the said minerals, shall be paid. Thereof the first payment or third part to be made undelayable at Michelmas, other two payments at two half years next after, that is to say, the Lady Day and Michelmas following. This order being for the old debts.

And because (as the said Daniel allegeth) the 'owrs' (ores) cannot be brought to perfection of metals without the said people's helps to bring in peats and to work as they have been accustomed to do. It is also ordered that the people shall use the same their wonted service. And to be paid at every half year's end the whole sum of whatsoever they shall bring in, or otherwise work; according as the said Daniel hath offered by his letter unto me, and bound himself. And this order to payment to continue only the said three half years till all the old debts be paid, with which time expired, the parties shall be both at liberty, and after agree for their work so well as they can.

And for better satisfaction of the people I order that every of them shall at convenient times (between this and midsummer next) bring in their old bills, and agreeing on their just sums) shall take several bills or (cedules) of the said Daniel signed with his hand and seal every man for his own sum, to be paid at the prescribed days, and use their favourable service and furtherance, in the premisses for their speedy means of payment, and commodity with God's grace to follow hereafter. And the special cause that moveth me to set down this order, is this. For that I see none other good means to procure payment to the poor men of such sums as are owing unto them.

(Sgd.) H. Huntingdon.'

This order is exceptional in that it is made by Huntingdon alone, the probable explanation being that both parties agreed to refer the matters in dispute to the Lord President's arbitration instead of forcing them to trial.

This course seems frequently to have been followed,

especially in disputes between chartered towns, or between Corporations or gilds and burgesses. Thus Huntingdon, as Lord President, in 1578 and again in 1586 drew up articles for an agreement between the citizens of York and the Mayor and burgesses of Hull as to the right of the former to sell at Hull goods shipped to the York merchants from abroad.[32] Other cases of the kind came to trial, and were heard and determined by the Council, sometimes by the wish of the parties as in 1603 when the burgesses of Newcastle disputed the claim of the Newcastle Hostmen's Company to limit its membership to the sons and apprentices of the existing members ;[33] sometimes by reference from the Privy Council as in the two great contests of the burgesses of Newcastle against the Mayor and Aldermen in 1597 and 1633.[34] The soundness of the Council's decisions when thus arbitrating between rival claims is proved by the facts that its decision in favour of the twelve mysteries of Newcastle against the Hostmen was confirmed by charter in 1604, and that decrees made by it for the regulation of wayleaves and staithrooms were still observed and appealed to more than a century later.[35]

The Council secured an extension of jurisdiction through the collapse of the church courts during the reign of Edward VI. Already crippled by the jealousy of the common law courts, the ecclesiastical courts had begun to lose to Chancery their jurisdiction over testamentary causes even at the close of the fifteenth century, and now they lost all effective jurisdiction except over probate and grants of administration.[36] That the Council in the North

[32] Hull Records, and Egerton MSS 2578 f. 156. This agreement proved to be a final settlement.

[33] *Newcastle Hostmen's Company*, p. 24 (Surtees Soc.). The whole decree is printed there.

[34] S. P. Dom. Char. I. ccxxxiii, 60, 61, 66, 78 ; ccxxxiv. Nos. 56, 67 ; ccxl. No. 52; ccxlv. No. 32 ; ccxlvi. No. 36 ; cclxiv. No. 60; cclxviii. No. 8 ; cclxx. No. 53.

[35] *Newcastle Hostmen's Company*, i. pp. xxxii, 138.

[36] Holdsworth, i. p. 398.

at this time secured a share of the Chancellor's jurisdiction over legacies and administration, must be ascribed partly to convenience, but partly also to the fact that in the northern Province testation and intestate succession of chattels were restricted by the right of the wife to a half, and of a wife and her children to a third part each, of the deceased's goods. These restrictions had disappeared in other parts of England early in the fourteenth century, but north of the Trent the restraint on testation lasted till 1692, and that on intestate succession till 1856.[37] This difference of law was in itself almost enough to divert much of the business connected with northern wills to the northern court of equity.

By the addition of such cases to the jurisdiction of the Council in the North, its resemblance to a modern County Court was made almost complete. Like the County Court the Council could entertain any common law action with the consent of both parties, any action founded on contract (except breach of promise of marriage), or any action founded on tort (the Council could even take libel and slander). Like the County Court, too, the Council had equity jurisdiction, and a measure of probate jurisdiction. Only the Admiralty jurisdiction of the County Court did not belong to the Council, nor had it any jurisdiction over titles to real property, and its jurisdiction in replevin was challenged.

The most important difference between the two courts is that, whereas the Council's jurisdiction was limited to cases in which at least one of the parties was too poor to seek redress at Westminster, either in Chancery or in one of the common law courts, the jurisdiction of the County Court is determined by the amount at stake. It was in 1596 made a matter of reproach to the Council that the condition of its jurisdiction was not observed. The reproach was just, but so was the contention of the Council that the condition was really an impossible one. 'It is not in the power of a Lord President and Council to know the

[37] *Ib.* iii. pp. 435-7.

estates of men without information of the parties themselves. And the Examinations of such informations offered would breed delays infinite to the parties and much difficulty and trouble to commissioners, especially in these times, if they should attend the examination of the ability or disability of suitors to follow the common law, for avoiding whereof it is to be presumed that the Lord President and Council in all former times following the example of other Courts in like cases have used to leave all persons of the North parts to their own election to resort or declare their jurisdiction and sithens that if that had been meant to be an exception to the jurisdiction of the Court at first it would no doubt have been pleaded commonly by the defendant which being not, we see no cause why any private person should except against it'.[38]

However satisfactory this solution of the difficulty might be to the Council and to the people of the North, who found it generally convenient to insist on the resemblance of the Council to the local Parlements which the kings of France had erected for the ease of their subjects,[39] it was anything but satisfactory to the central courts which saw themselves deprived of a large amount of business. Nor was it altogether desirable in the interests of the law, which was still engaged in destroying the infinite variety of local custom. It is true that the substitution of uniform law for local custom can be carried too far, but that stage had not been reached at the beginning of the seventeenth century, especially north of the Trent, where it was, indeed, the chief work of the Council to bring local law into harmony with national law. That men were dimly aware of the true solution of the problem is shown by the Instruction of 1609 that the Council should entertain actions for arrears of rent only when the amount did not exceed £40; and had there been a single statesman among the leaders in the struggle between the Council and the Law Courts of which

[38] S. P. Dom. Eliz. cclix. No. 100.

[39] Smith, *De Republica Anglica*, ed. Alston, p. 83-4.

the Instructions of 1609 were the outcome, the principle embodied in this single clause might have been extended to all branches of the Council's jurisdiction without detriment to the interests either of the Courts at Westminster or of the Council, and most assuredly to the great benefit of the people. The opportunity was missed, and the bickering of the Courts went on until with the Council in the North there disappeared what might have been the first of our modern County Courts.

It remains to consider the validity of the commission which conferred on the Council its civil jurisdiction. At first sight, it seems impossible to doubt the illegality of a commission which in erecting a new court of common law also erected a new court of equity, so strenuously has that illegality been asserted.[40] Yet there are a few considerations that may make us hesitate to deny the original validity of the Council's special commission. Maitland, in support of his contention that the Crown has even now the power to create new courts, quoted a judgment of the Privy Council: 'It is a settled constitutional principle or rule of law, that although the Crown may, by its prerogative, establish courts to proceed according to the common law, yet it cannot create any new court to administer any other law; and it is laid down by Lord Coke in the Fourth Institute that the erection of a new court with a new jurisdiction cannot be without an Act of Parliament'.[41] Now, the interesting point about this judgment is that it makes it clear that the ultimate authority for the maxim that the Crown cannot create a court of equity by prerogative is Coke. Turning to the Fourth Institute, we discover that the occasion of this pronouncement was the quarrel between

[40] Coke, *Fourth Institute*, pp. 242, 245, 281; Hyde's Argument against the Council in the North, *Daily Proceedings*, ii. pp. 409 ff; *Journals of House of Commons*, ii. p. 127; *do. of House of Lords*, iv. p. 227; Hallam, *Const. Hist.* pp. 325, 363.

[41] *In re* Bishop of Natal, 3 Moore, P. C. (N. S.) p. 152, quoted, Maitland, *Const. Hist.* p. 419-420.

the common law courts and the Council in the North which came to a head in 1608-9.[42] From Coke's Reports, however, we learn that his dictum went far beyond what is implied in the judgement of the Privy Council. It there[43] appears that Coke asserted that, while the King by commission may give power to determine criminal causes between the King and the party *secundum legem et consuetudinem Angliae*, he cannot give power by commission to determine causes between party and party. There is here no distinction drawn between common law courts and courts of equity. Coke's condemnation of *all* civil courts created by commission as being illegal is emphasised by his further assertion that by exception the King can by his letters patent grant to a corporation to hold a court to proceed according to common law, although he cannot by such letters grant to it a court of equity.[44] Since Coke's judgment on the ability of the Crown to create new courts by prerogative has been traversed by the Privy Council so far as common law courts are concerned, it is permissible to question whether the rest of the judgment rests on a good foundation.

Coke's argument that as commissioners cannot determine felonies or other criminal causes by writ but by commission, so cannot any determine private causes betwixt party and party by commission, but by writ, since by the Statutes of Magna Carta, cap. 12[45] and West. 2. cap. 30. '*Recognitiones de nova disseisina, de morte antecessoris, et de ultima presentatione, non capiantur nisi in propriis comitatibus*', seems to the lay mind wholly irrelevant, as merely proving that the king cannot by commission enable the Justices of Assize, or, for the matter of that, the Courts at Westminster, to take certain possessory actions out of their proper counties. How this could restrain the King from creating by commission a court to determine actions

[42] *Fourth Institute*, pp. 242, 245.

[43] *Rep.* xii. p. 50. *ff.*; cf. xiii. 30 *ff.*

[44] *Rep.* xii. 52.

[45] *Sic*, but really, cap. 18 of the 1215 version, cap. 13 of the 1225 one.

founded on contract or on tort is certainly not obvious.

Coke seems to be on firmer ground when he says, 'He (the King) cannot give power by commission to determine causes between party and party; as it was resolved in Scroggs' Case, anno 2 Eliz. fol. 175. in Dyer'.[46] Yet the case, as reported by Dyer,[47] hardly seems to bear the interpretation put on it in 1609. Briefly, the case was this. While the office of Exigenter of the Common Pleas was vacant by death in 1558, the Chief Justice of that Bench died, and during the vacancy of both offices Queen Mary granted the office of Exigenter to one Coleshill by letters patent, and the same day created Sir Anthony Browne, Chief Justice, who at once appointed to the office of Exigenter, his own nephew, Scroggs. Elizabeth, on her accession, commanded the Lord Keeper to examine Coleshill's title, and all the Judges of the Queen's Bench, with the Attorney of the Duchy, were convened, who, after long debate and hesitation, decided that Coleshill's appointment was null, the gift of the office belonging to the Chief Justice of the Common Pleas. Coleshill, however, induced the Queen to issue a commission to the Earl of Bedford and nine others, among them three of the Judges and the Master of the Rolls, to hear and determine the title to the office and if Scroggs refused to answer to commit him to prison. Coleshill accordingly exhibited a bill of complaint against Scroggs, who refused to answer, demurring upon the bill and the jurisdiction of the Court by that commission. He was therefore imprisoned until three serjeants made request in the Bench for a *corpus cum causa* to the Warden of the Fleet. Dyer, Browne and Weston thereupon granted the request, 'because he was a person in the court and a necessary member of it'. This report certainly gives the impression that the judges were so far from resolving that the Queen could not grant a commission to hear causes between party and party, that they deliberately ignored that issue,

[46] *Rep.* xii. 52.

[47] Dyer, *Rep.* trans. Vaillant, pt. 2. p. 175a, Skroggs against Coleshill.

preferring to take their stand on the admitted right of the Courts at Westminster to exclusive jurisdiction over their own officials. Crompton, indeed, actually claimed that this very case proved that the Lord Chancellor could grant a special commission to hear and determine matters dependent in the Chancery between the parties, and if they cannot agree, to return in whom the fault lies.[48]

It appears therefore that the validity of the special commission of the Council in the North depends on the legality of the special commissions of oyer and terminer and of inquiry that Chancery had always used for carrying out its judicial functions.[49] The protests of Parliament against these commissions in the fourteenth century count for nothing in determining their legality; in like manner Parliament protested against the whole jurisdiction of Chancery without in any degree affecting its legality. Against them must be set the fact that the Lord Chancellor continued to issue commissions for the reasonable division of lands,[50] for the arrest and imprisonment of offenders who were to find security for their appearance before the King and the Council, and for quiet possession,[51] and if special commissions for such purposes could be issued, why not general ones?

It is true that by Coke's time Chancery, having found a better instrument, had almost ceased to use the special commission of oyer and terminer; but this did not make the commission illegal. There is, indeed, reason to believe that shortly after Crompton deduced from Scroggs' Case the legality of the special commission of oyer and terminer, the judges found themselves obliged to endorse his views; for Anderson and Glanvil, who declared the Court of Requests illegal, did so on the ground that, 'This Court hath not any power by commission, by statute, or

[48] Crompton, *Jurisdiction de Cours*, 1594, p. 132.
[49] Baildon, *Select Cases in Chancery*, p. xxviii.
[50] Pat. 21 Edw. IV. p. 1. m. 16d, 26 Nov. 1481.
[51] Pat. 22 Edw. IV. p. 1. m. 23d, 18 May 1482.

by common law,' thereby implying that a court of common law and equity *could* be erected by commission.[52]

Of course, the real justification for Coke's attitude was that it was contrary to public policy, not that the King should have the power to create new courts of equity, but that there should be no appeal from such courts even when dealing with matters determinable at common law. His stiff defence of the issue of writs of *habeas corpus* and of prohibitions to the Council in the North was therefore thoroughly justifiable; but his attack on the legality of the Council's commission is quite another matter, and it seems as though he had in this as in too many cases allowed prejudice to betray him into advancing arguments of, at best, doubtful validity.

Whatever their value, they were of no avail, and the Council in the North retained its civil jurisdiction for more than thirty years after Coke had declared it illegal.

[52] Coke, *Rep.* p. 646.

CHAPTER V.

The Court at York: its Relations with the Local Courts.

Of all the problems that the Council had to tackle, the earliest and the most persistent was that of its relations with the local courts within the limits of its commission. That commission, even in 1530, included only Yorkshire, York and Hull, but in 1537 it was extended to Northumberland, Cumberland, Westmorland, Durham and Newcastle;[1] and in 1561 Carlisle and Berwick also were brought within its limits.[2] As these were extended, so were the chances of conflict with the local courts, many of which were already decaying, and therefore the more tenacious of their rights and privileges.

All the causes that called for the exercise of the extraordinary jurisdiction of the King's Council in the Chancery and in the Star Chamber were at least as powerful in the North as they were in the South. The governing bodies of corporate towns, close oligarchies as they usually were, were too often nests of petty tyrants who ruthlessly sacrificed the rights of their poorer neighbours to their own advantage or to private animosity. In the courts of the franchises and manors the administration had passed almost entirely into the hands of the stewards, who were now hardly controlled by their lord's council. It is true that by the middle of the sixteenth century the worst forms of disorder were yielding to the steady pressure of the Council in the North, at least in the inland shires; though the administration of justice in Northumberland and Cumberland was a mere farce even at the close of the

[1] Titus F. iii. f. 94; cf. Pat. 31 Hen. VIII p. 6. m. 14.

[2] Pat. 3 Eliz. p. 11.

century.[3] Disorder, however, only gave place to fraud and cozenage, and to a tyranny more oppressive and more galling since it was exercised in the name, and under the forms, of law.

Pilkington, Tunstall's successor in the see of Durham could write of his own courts, 'The law here is endet as a man is friendet';[4] and at any time during the Council's existence, it must have been possible for it to justify its interference with the local courts as it did in 1596. Accused of staying proceedings and suits in the City of York, Chancery of Durham, and all Corporations and many courts barons, and of determining the right of the Queen's copyholders and others, which belonged to the courts of the manors, the Council retorted, 'There be many times complaints exhibited unto the Lord President and Council of very unconscionable proceedings of diverse of Her Majesty's subjects that in these courts do make their demands of extreme penalties and forfeitures, for that the judges and ministers of such courts are either parties to the suit or their kinsmen, servants or friends to the same party, and by reason thereof do deal in such causes with such extraordinary favour and affection as is contrary to all equity and good conscience. Which manner of dealing would be very common in the liberties of the North parts if there were not near and ready mean for the moderation thereof'.[5] That the Council's interference with the local courts was justified, made it no more agreeable to them, and from time to time they uttered more or less ineffectual protests against its action.

From the shire courts of the counties within its commis-

[3] The Northumberland gentlemen appointed in Nov. 1595 to inquire into the decay of the Middle March reported that the spoils were so many that they could not be assessed, but in an hour's time among themselves they had counted 155 murdered in defence of their goods, while of prisoners take and tortured to obtain greater ransoms, there were so many that they needed time to perfect their answer (*Hatfield Cal.* v. p. 476-7).

[4] S. P. Dom. Eliz. xx. No. 25.

[5] Ib. cclix. No. 100.

sion the Council had nothing to fear. Always weak owing to the number and size of the northern liberties, these courts had long since lost their criminal jurisdiction to the Justices of the Peace, and were unable to offer resistance to the Council in the North. Yet, distance, and the influence of the Bishop in Durham, and of the Earl of Cumberland in Westmorland, did much to save the four northern shire-courts from extinction, and the Act of 1549 for the keeping of County Courts did more ;[6] but it is probable that the Council absorbed most of the judicial business of the Yorkshire County Court, hampered as that was by an antiquated procedure.

The gradual concentration of most of the honors and baronies beyond the Trent in the hands of the Crown, either by forfeiture or by exchange, enabled the Council in the North to establish its control over their courts without difficulty, since their stewards and bailiffs, as royal officials, were not likely to oppose the King's Council. Of the honors and baronies still in private hands in 1572 the greater number belonged to the Earls of Northumberland and Cumberland, or were divided between the Dacre co-heiresses ; and as they were perforce absentees their councils could only yield when the King's Council claimed to be the first court of appeal from all barony and manor courts North of the Trent. The example set by the courts of the liberties was followed without resistance, even if with reluctance, by the hundred and manor courts. It has already been shown that the Council always acknowledged the rights of these local courts, and although it must in practice have deprived them of a good deal of their most important business in connection with copyhold and tenant-right, they still retained a good deal of work in the form of personal

[6] 2 3 Edw. VI c. 20. In the *Returns relating to Courts of Requests, Courts of Conscience, and Courts having jurisdiction in personal actions* (1840), it is stated (p. 106) that the Northumberland County Court was established by this Act. Although this cannot be true, the error is full of significance.

actions between tenants and so forth, as only gross injustice could make it worth while to remove from a distant manor or barony court to the Council at York cases in which no greater amount than 40s was at stake.

Of all the northern Liberties the most important were the two great Palatinates of Lancaster and Durham, each of which had a fully developed judicial system of its own, including a Court of Chancery. With these the relations of the Council in the North required careful adjustment.

The County Palatine of Lancaster was entirely outside the Council's jurisdiction; but a considerable extent of land both in Yorkshire and in Northumberland belonged to the Duchy of Lancaster, and was subject to the Duchy Court. Of the relations between this Court and the Council in the North it is impossible to say anything, for the records of the Council have disappeared, and those of the Duchy have not yet been investigated. The same limitations exist with regard to the County Palatine of Durham; but in this case the correspondence of the Council with the Secretary of State fortunately throws a gleam of light on an obscure part of the Council's history.

The Chancery of Durham was not exempt from the faults of its less important neighbours, and the very first year of the inclusion of Durham in the Council's commission saw the creation of several precedents of suits stayed in the Chancery of Durham by injunction from the Council.[8] At that time Tunstall was Lord President as well as Bishop of Durham, but his retirement from the Council apparently made no difference[9] even in Henry VIII's reign, and in Edward VI's the long imprisonment of the Bishop leading up to the union of the County Palatine with the Crown,

[8] S. P. Dom. Eliz. cclix. No. 100.

[9] In March 1560, Serjeant Meynell, Chancellor and Steward in the Bishopric, asked Winchester to stay by letter to the Council or by injunction to the party, a suit at York which should have been brought before the Chancery at Durham (*For. Cal. 1559-60*, No. 850). Meynell was also one of the fee'd members of the Council in the North.

enabled the Council in the North to secure a control over the Bishopric which could not afterwards be destroyed entirely. Tunstall's successor, Pilkington, as a Protestant Bishop in what was perhaps the most intensely Catholic county in the kingdom, had to rely on the support of the Council to maintain his own position, and could not afford, even if he wished, to check its interference in the judicial administration of his Palatinate. There is, in fact, no hint of differences between the Council and the Bishopric till 1580 ; but in that year relations seem to have been strained. Lacking definite information as to the cause, it can only be suggested that the trouble began with the refusal of the Prebendaries of Durham to abide by the agreement with their tenants signed in 1576.[10] Almost immediately, the Privy Council was called upon to deal with the petitions of widows and other tenants who complained that they could get no relief in the Chancery of Durham, and Huntingdon was directed to make a thorough investigation into the conduct of all concerned. Meanwhile, other irregularities appeared, and a commission was sent to Huntingdon and the Bishops of York and Durham to investigate the disorders in the Dean and Chapter.[11] Almost at once the original causes of the visitation were lost sight of in a bitter theological controversy as to the validity of the Dean's orders, which were discovered to be Genevan.[12] Soon winged words were flying ; Ralph Lever, one of the Prebendaries who had been foremost in resistance to the agreement of 1576,[13] told his Bishop that his Lordship's speeches were like the snatches of a 'wodde' dog ;[14] and the Archbishop of York quarrelled hopelessly with his Dean and with the Lord President.[15] While the controversy was at

[10] P. 300–1.

[11] *A.P.C.* ix. p. 291, 313, 337 ; *Hatfield Cal.* ii. p. 642.

[12] Lans. 27 f. 10.

[13] S. P. Dom. Add. Eliz. xxv. Nos. 7-11 ; Lans. 43 f. 48.

[14] Lans. 36 f. 135. 'Wodde' means 'mad' ; cf. anti-Jacobite song, 'The women are all gane wud'.

[15] Lans. 28 f. 178 ; ib. 29 f. 120.

its height, the Council at York issued an injunction for the stay of a suit in the Chancery Court at Durham concerning a water-mill at Bedlington.[16] Whether it was this that brought the growing exasperation to a head or not, certain it is that an attempt was now made to withdraw the Bishopric from the jurisdiction of the Council. Huntingdon protested, writing thus to Burghley ;[17] 'Your Lordship knoweth better than I, the first cause of the authority here planted for the government of these parts. And by the little experience which I have gathered in the time of my service here, both of the common people, and also of the better sort, that do inhabit these parts, for the disposition of their minds, bewrayed by words and actions that come from them often-times ; assuredly if this Council were not, I am persuaded that the disorders here at this time would compare for number and greatness with former times. And truly if the commission should be abridged of that authority in the Bishopric which in all times past it hath been possessed of, it would prove in short time (except I be greatly deceived) very evil for the service of Her Majesty and worse for the people'. It may be doubted whether the protest was really necessary, but in any case no change was made.

During Huntingdon's life-time, no further attempts were made to restrict the Council's jurisdiction or to interrupt it in the exercise of its authority ; but his death was the signal for a general attack, led by the Lord Keeper, by all the Courts, great and small, that felt aggrieved by the Council's existence. The Bishop of Durham began to issue Injunctions under the Seal of the County Palatine commanding men to stay their suits before the Lord President and Council.[18] What success attended his efforts to restore the independence of his Chancery, there is at present no means of discovering. But one small success he had, if indeed he had engaged in contest. In the Instructions given

[16] *Cal. Fleming MSS.* p. 11; 11 March 1579.

[17] 22 Oct. 1580 ; Harl. 6992. No. 66.

[18] S. P. Dom. Eliz. cclix. No. 100.

to Burghley in 1599 (Art. 15), the Council was directed to write letters or direct process to the Bishop of Durham or his officers for the apprehension of such as the Council required, as it had in 1561 been directed to send letters to the Lords Wardens; and the Queen undertook to send letters to the Bishop admonishing him to accomplish such letters and process from the Council. It is, however, probable that this instruction was really the outcome of a recent struggle with Berwick, which had led to a general revision of the Council's position with respect to the shires within its jurisdiction.[19]

It is probable that the Council found the towns named in its commission more troublesome than the liberties; all of them were counties, and two of them — Carlisle and Berwick — were garrison towns to boot. Of these towns the most important, and the one with which the Council first had dealings, was York. The key-note of its relations with the Council was struck in December 1484, when the Mayor and Council of York decided to send John Stafford to the Council in the North at the Earl of Lincoln's bidding, 'the franchise of the city saved.'[20] From this attitude of jealous watchfulness the city never wavered, in spite of its readiness to welcome successive Presidents with civic pomp, and to shower on them gifts of wine and sugar.[21] It has already been noticed how in 1502 the Mayor and Council unanimously agreed: — 'That if therebe any dette, dewte, trespasse, offense or any other cause of greiff herafter appering betwixt any of the xiith, xxiiilth or betwix any other franchist men shall not from hensfurth compleyn to the

[19] P. 334-5.

[20] Davies, *York Records*, p. 201.

[21] E. g. 15 Jan. 1581; Y. H. B. xxvii. f. 265: — 'Agreed that my Lord Mayor, Aldermen, and Sheriffs and Twenty-four meet my Lord President, being now Lord Lieutenant and lying at the manor, at Bootham Bar in their best apparel, viz: the Mayor and Aldermen in scarlet, the Sheriffs and Twenty-four in 'cremesyon' to morrow at 9 o'clock before noon, and receive his Lordship into this city'. There follows a fine description of the entry and the reading of the commission of Lieutenancy at the Guildhall.

kyng's grace or to any lord or other person nor sew in any court at London or any other place to fore al such cause and matere be shewed to the maior for the tyme beyng And by the maior and his counseill agreed and determyned within the space of xl^{ti} dayes next after that it be shewed to the maior And if ther be none Agrement ne dessecion taken therein by the maior and his Counseill within the said xl dayes Then the partie greved in any suche behalve ta have licence of the maior to serve at the comon lawe according to the kyng's charters And if any Alderman do contrary to this ordinance at any tyme herafter to forfeit and lese toward the comon welthe of this citie xx^{li} and if any of the xxiiijth do the contrary to forfeit and lese x^{li}. And if any other franchist person do the contrary to forfeit xls. at every tyme in maner forme above said.'[22]

Protected by this bye-law, not only the common law courts of the City but also the Lord Mayor's Court of Chancery[23] were able to hold their own against the Council in the North until after the Pilgrimage of Grace. Then the part taken by York in the rebellion made it impossible for the city to assert its rights. Accordingly, we find the Mayor meekly waiting upon the Lord President to make answer to a bill of complaint exhibited against him by the parishioners of the parish of Trinity in Goderomgate before the king's most honourable Council established in

[22] Ib. viii. f. 129. The working of the bye-law is seen in a case of 1506. On 2 January it was agreed by the Mayor, etc. in the case of Richard Thornton, Alderman, John Thornton his son, and Agnes his wife, and Ralph Blades, against Alan Stavely, Alderman, and his brethren, that Richard Thornton and Alan Stavely should be bound before the Mayor, each in £100 that all the parties will obey the decision of George Kyrke, William Nelson, John Stokdale, Thomas Jameson, Aldermen, Master Thomas Dalby, Provost of Beverley ['afterwards Archdeacon of Richmond, and a member of the Duke of Richmond's Council], Master Doctor Hanebald. If the arbitrators cannot agree on an award before the Feast of St. Paul, then all parties shall be bound to obey the judgment of the Archbishop of York [the King's Lieutenant and High Commissioner in the North parts] (ib. ix. f. 28*b*).

[23] Drake, p. 196 f.

the North parts, and agreeing to send to the Lord President the names of all the men presented into the Exchequer for erecting fishgarths, etc. in the water of Ouse, although the Mayor and Aldermen had cognizance of such offences by statute as well as by commission, and the Lord President and Council had none.[24]

Edward VI's reign saw an immediate change in the attitude of the Mayor and Aldermen. Although they had obeyed in silence, the had deeply resented the Council's assumption of authority over them and especially the action of the Lord Archbishop, who, 'being Lord President of the North, had of displeasure and wilfulness, contrary to the old usage compelled them to send certain light horse to be made ready' for service on the Border. Therefore, when at the close of 1548 a commission for levying soldiers for the garrisons was addressed to the Captain, Robert Constable, as well as to the Mayor and Sheriffs, accompanied by an order that the men should learn to shoot the arquebuses with which the city was required to furnish them, the City Fathers instructed their Burgesses who were then attending parliament to pray the Lord Protector 'to redress the wrongs done to the city by the Lord President in breach of the charters which gave the Mayor and Sheriffs sole cognizance of all actions of trespass done within the city and suburbs, and granted that the King's commission should be directed only to the said Mayor and his brethren in all things concerning the King's affairs within the county of the said city as was ever accustomed and used before the establishment of the Court of Requests in the North parts'. Somerset, however, was in no mind to submit to any restriction of his executive authority, and simply ordered the Mayor to furnish the soldiers with the necessary furniture as required and henceforth to obey all commissions from the Council in the North.[25]

So far as administrative authority was concerned, the

[24] Y. H. B. xv. f. 19, 3 June 1541 ; xvii. f. 17, 6 July 1543.

[25] Ib. xxii. f. 68b ; xix. f. 36b, ff.

victory of the Council over the city was for the moment complete; but the decline of the Council's prestige during Warwick's ascendancy encouraged the Mayor and his brethren to renew the struggle, and in 1557 they flatly denied the right of the Lord President to require them to call the musters of able men under the statute just passed [26] and to certify him of their number. However, after placing it on record that by charter they were quit of obeying any precept or commandment except the King and Queen's under their Great Seal or Privy Seal, they compromised by calling the constables before them in their capacity as Justices of Peace and requiring them to take orders for musters, not under the Lord President's command, but under the Statute of Winchester. Six months later, when the Council sent a demand for light horsemen, it was obeyed only when repeated by Shrewsbury as Lieutenant-general, the Recorder having told the Mayor that in such case he had under martial law no choice but to obey.[27] For the future this precedent was always followed, Shrewsbury and his successors being careful to make it clear that their demands for men and musters were made in their capacity as Lords Lieutenant, not as Lords President.

In asserting their justiciary rights within the city boundary, the York magistrates were on much firmer ground; and the disfranchisement (14 May 1550) of a citizen who refused to leave a suit that he had begun against a fellow-citizen before the Council in the North,[28] was a useful reminder to all concerned of the city's rights and authority. Nevertheless, the great extension of the Council's jurisdiction, criminal and civil, during the next reigns, could not fail to bring it into conflict with the city, despite the good offices of Sir Thomas Gargrave, who was a freeman of York as well as Vice-president of the Council.[29] As

[26] 45 Ph. & M. c. 3.

[27] Y. H. B. xxii. ff. 46, 68b, 75b, 79.

[28] Ib. xx. f. 15.

[29] Ib. xxiii. f. 45b. There are many entries of gifts of wine to Sir Thomas 'for being friend to the city'.

early as 1568 the Mayor and Aldermen found it necessary to retain counsel for the defence and maintenance of the rights and liberties of the city before the Council at a fee of £5 a year ; and three years later (June 1571) they appointed a Solicitor for all matters for the city before the Lord President and Council in the North at 40s. a year.[30]

It was felt, however, that there would be no need for these expenses if only the citizens could be kept from resorting to foreign courts ; and to this the Mayor and Aldermen now gave their attention.

It so happened that in 1566 Alderman Beckwith having brought an action in the Admiralty for debt connected with the rebuilding of Ousebridge against Robert Cripling, a free citizen, there was read over in the Council Chamber "an ordinance in the old Register Book, 'That no citizen of the said city cause to arrest ne attach another citizen that is of the franchise before foreign justices out of the said city by precepts ne in other manner than before the Mayor and bailiffs or Justices of the same city upon pain of losing his franchise and amercement of 40s to the city's use ;' which whole ordinance with the penalties of disfranchisement and another of 40s aforesaid it is now agreed and fully confirmed to stand and abide in full strength and effect". The penalties were not exacted on that occasion ; but in July 1571, John and Anthony Atkinson, having sued my Lord Mayor, Gregory Peacock, in a foreign court, were disfranchised. Disfranchisement, however, was too extreme a penalty for frequent infliction, and a fine of 40s was too small, so a new ordinance was accepted in 1578 :— 'That no citizen or citizens of this city shall sue or implead any other citizen or citizens of the same in any court or courts other than such as are holden within this city by virtue of the Queen's Majesty's Charters or other the laws and customs of this city for any matter or cause for which he or they may have remedy or recovery in any of the courts holden within this city by virtue of the said Charters or

[30] ib. xxiv. f. 110, 11 June 1568 ; ib. f. 242b, 8 June 1571.

the customs and lawful usages of the same City, upon pain that every one offending herein shall forfeit and pay to the City's use for every such offence x^li.[31]

Four years later the Mayor, in a letter to the Recorder,[32] complained 'That the Lord President do take such part his servants against the mayor and commonalty of the said city that they are not able for to enjoy and maintain the ancient right of the said city unless a reformation therein be shortly had'. His complaint was emphasised by the action of William Allen, a freeman of the city, who commenced a suit against Thomas Mason, another free citizen, before the Vice-President and Council in the North and refused to submit to the Lord Mayor when called upon to have his case heard before him; seeing that Mr. Dean and the Church of York would bear out Allen, if it cost them £100, the matter was stayed till the Recorder came from London. It is, perhaps, not without significance that in January 1581 an ordinance was made,[33] 'That if any attorney before the Lord President and Council, or any proctors of the same court or of any other court, being free citizens of this city, shall chance at any time hereafter to be elect Aldermen of the same shall not at any time from thence forth use or exercise any their said offices of Attorneyships or proctors in any court upon pain of forfeiture of such sum of money to the use of the Mayor and Commonalty of this city, and such punishment as my Lord Mayor and Aldermen shall assess upon him, and if he refuses to be Alderman being elect, then he to pay such fine as my Lord Mayor and Aldermen shall assess upon him'.

We learn no more of the relations between the Council and the city of York, save for a reference in the general charges against the Council in 1596,[34] until 1608, when Sheffield quarrelled with the Mayor of York, who claimed

[31] Ib. xxiv. f. 52b, 249b; xxvi. f. 41b.
[32] Ib. xxviii. ff. 51, 18 May 1582.
[33] Ib. xxvii. f. 273, 4 Jan. 1581.
[34] No. 8.

to carry the sword of office with the point up, except the King's presence, while the Lord President said that it should be abased in his presence. The case was tried in the Court of the Earl Marshal, who decided for the Mayor, 12 May 1609.[35] While the case was undecided the Mayor refused to meet the President in state, and even after the decision had gone against him, Sheffield tried to get his own way. The inevitable result was that the relations between the Council and the Mayor and Aldermen became strained, and in 1613 it was agreed that as the Lord President was then in London about procuring new and larger Instructions for the King's Council in the North, two of the Aldermen with a clerk should be sent up to London, and with the advice of Mr. Serjeant Hutton, Recorder of the city, and Mr. Christopher Brook, should petition the King or the Lords of the Privy Council for the ending of the differences between the Lord President and Council, and the Corporation, touching the liberties of the city which had been much infringed by the said Council.[36]

The Articles exhibited against the Lord President and Council were six in number.[37] The sixth Article is directed against Sheffield as Lord Lieutenant rather than as Lord President, because he had directed letters for musters to Sir Thomas Fairfax and Sir John Mallory, who were Justices of the Peace in the shire but not in the city, instead of to the Lord Mayor according to custom. The other articles, however, do concern the Council, and are short enough to bear quotation in full.

> 'First, whereas the Mayor and Aldermen are J. P's within the said City and County of the same by Charter, and do direct forth warrants of the peace against any of the same City or County thereof, for breaches of his Majesty's Peace, the party understanding thereof, in contempt of the magistrate, will bind

[35] Drake, Ap. xxiii.

[36] Y. H. B. xxxiv. *ff.* 5b, 10, 14.

[37] Ib. xxxiv. f. 10b.

themselves to the peace before the Council and procure a *supersedeas* in discharge thereof, none of the Council being in Commission within the City or the liberties thereof.

'Item, whereas we, being J. P's by charter, have at our Quarter Sessions of Peace, power to inquire of the breach of divers penal laws, and have also by Charter for maintenance of the stone bridge of the said City and other charges the forfeitures arising by the same, notwithstanding divers citizens are sued and put to charges in law upon penal statutes by informations before the said Council to the great prejudice of our Corporation.

'Item, whereas the city being a County of itself the Sheriffs and their officers having the breaking up and serving of all process as issue forth of his Majesty's Courts; the Council do award warrants, attachments and commissions of rebellion, and direct them to their own Pursuivants or to the Tipstaff of the Court against citizens for not appearing and answering before the Council, or for not performing of orders or decrees made before them, whereby they being attached are commit to foreign gaols or to the Tipstaff's house, to their great charges which, as they conceive, is against their Charters and liberties, and hath of late raised many 'garboyles' and disorders in the said city.

'Item, whereas the King's Majesty and his progenitors have had an ancient Court of Record which hath been holden time out of mind of man before the Sheriffs of the said City confirmed by several ancient Charters wherein there have been trials from time to time before the Sheriffs assisted by the Recorder or other the Learned Counsel of the City, now of late very many actions of trespass upon the case and debt being at issue in the said Court and ready to be tried, and the parties ready with their Counsel to proceed in their suits, letters have been served upon them for staying

their suits and removing of the causes before the Council to their great prejudice and expence and for delay of justice.

'Also the Council have privileged and set at liberty divers persons who have been arrested to answer in the Court holden before the Sheriffs of the said City upon plaints or actions there affirmed; some Sheriffs have been committed to the Castle for that they durst not obey the same privileges, and have remained there for a long time in the same prison; and others some Sheriffs have been sued in some of the Courts at Westminster, for that they have set at liberty upon such privileges and have been enforced to pay great sums of money for the same, and many have lost their debts of such as have been privileged."

The Articles having been sent with a petition to the King were referred to the Lords of the Privy Council, before whom the case was argued at Whitehall by several counsel for each side.[38] To the first Article, the Lord President and Council alleged their Instructions whereby they might grant peace for the meanest against the greatest.[39] The Lord Chancellor told them that the granting of *supersedeas* was not the complaint of York and Yorkshire only, but of the whole kingdom, and that he had spoken much against it; so he advised that there should be great care taken in granting *supersedeas* of either side, and asked the Aldermen if they could not rule their citizens.

To the second also, the Instructions were alleged,[40] and it was added that the Mayor and Aldermen would be sparing in punishing the great men among them; and thereupon the Lords left it at liberty to sue in either court for such offences as both might deal with.

To the third also the Instructions were pleaded[41] and

[38] Ib; cf. *Cal. Duke of Northumberland's MSS.* x. June 1614.

[39] Instr. 1603, Art. 31.

[40] Arts. 36, 39 and Commission, Pat. 1 Jac. I. p. 21d.

[41] Arts. 15, 38.

the example of Chancery and the High Commissioners was urged; but the Lord Chancellor declared that he did send serjeants-at-arms into London, and that hurt had like to have ensued thereupon, so advised to be sparing in granting them.

It is not at first obvious that in the fourth Article the Mayor and Aldermen were asserting a right to hold a Court of Chancery, but this was in effect what they were doing; and when the Council in the North declared that they had never heard that York had a Court of Chancery, it was boldly claimed for the city by prescription. The Lord Chancellor then recommended the Lord President and Council to follow his own practice, which was, not to remove such causes as were pending between citizens of London before the Lord Mayor and Aldermen there, nor to remove any matters out of any court after they were at issue and ready for trial, unless they were that he called pickpocket actions, for forfeiture of a bond or *ejectio firmae*; which course the Lord President and Council said they would be willing to follow.

To the fifth, Instructions were again alleged[42] and the Lord Chancellor said that without privileges the Court could not be held, but advised that they should not be granted but when men came *bona fide* to prosecute or defend their actions, and not to such as should linger or spend any long time there, or that dwelt there. As for those who sued the Sheriffs for setting at liberty those who had privilege, the Lord Chancellor said that he would not only grant *subpoena* for the staying of such suits, but also lay such person by the feet as should prosecute the same suit, until the Sheriffs were discharged.

Of these complaints, although now made by York for the first time, not one was new. The question of the *supersedeas* had been raised under Huntingdon by the West Riding Justices;[43] that of the execution of the penal sta-

[42] Arts. 38, 52.

[43] Pp. 221, 336.

tutes had entered into a quarrel with the Courts at Westminster,[44] that of the arrests by the Tipstaff had already been fought out with Berwick;[45] Durham had defended its Chancery.[46] Even the question of privilege must have been raised before 1599, when the Instruction alleged by the Council was in that year inserted for the first time because it directs that privilege shall be granted to suitors and defendants 'in such sort as hath been heretofore by the said Council used', and there was no need to confirm an established practice unless it had been challenged. Yet the raising of these points in 1613 has a special interest because it elicited from the Lord Chancellor and the Lords of the Council a definite statement as to the powers they were prepared to secure for the Council in the North.

It is probable that Ellesmere's advice bore good fruit, for we hear no more of dissensions between the Council and the Corporations. Nevertheless, we may believe that the latter still resented the claim of the former to call suits before itself; for the Instructions given to the Burgesses in January 1621 contain the suggestive bit of news that, 'It is said that Hull, Beverley and Heddon will prefer a Bill in Parliament that no matters commenced in his Majesty's Court granted to the said Corporations by Charters should be removed forth of the said Courts before the Lord President and Council in the North, but such as are upon Bonds wherein there is cause of Equity'.[47] What action, if any, was taken, does not appear, and the statement remains, not only as the last hint as to the relations between the Council and the City of York, but also as the only evidence as to the attitude of Hull and Beverley. This is the more striking because Hull was included in the Council's commission at least as early as 1530, and in 1537 the Council was required to hold one session a year at Hull.

[44] Pp. 293, 295-6, 351.
[45] P. 334.
[46] P. 321-2 ff.
[47] Y. H. B. xxxiv. f. 211b.

Of the Council's relations with Newcastle, which with its County had been included in the Commission since 1537, we know as little. Of Carlisle and Berwick we know a little more owing to their position as garrison towns. As such, they were subject to a dual government, civil and military, and enjoyed peculiar privileges, especially as to freedom from arrest for debt.[48] The result was that in 1561 they had to be included in the Council's commission, and that Instructions had to be given for letters to be written and process to be directed to the governors of those towns as well as to the Wardens for the arrest of such as could not be apprehended by the sheriffs; for, as Gargrave pointed out, 'Carlisle and Berwick claim their liberties, and do not well obey, and if this is allowed, they will be a harbour for such evil persons as will not pay their debts nor for other matters or offences abide justice'.[49]

To neither town in fact could the Council send its own officers to make an arrest. The country between York and Carlisle was far too wild for any arrest to be easily effected without the help of soldiers; and that between Newcastle and Berwick was almost as bad. As regards Berwick, the situation was complicated by the fact that that town and its county had a Council of their own, with establishment and instructions signed by the Queen's own hand; they had "their own Chancery, Martial Court and probate of wills, and a distinct signal of government by their white staves of authority" and their Chancellor and Treasurer were 'of old termed the King's Chancellor and Treasurer of his Exchequer of Scotland', all this besides the Mayor and Council of the borough. It is no wonder that the Privy Council of King Edward VI's time compared the position and privileges of Berwick to those of Calais; that Lord Hunsdon, when Governor, prevailed over Huntingdon in a contest for its control; and that one of his successors declared, 'That they of York might as well

[48] *Cal. Border Papers*, ii. No. 1268.

[49] Border Papers, iii. No. 426.

direct their letters 'to that state', if English, or to Wales or Ireland as to us. With all respect, we contemn not York, but think ourselves equal'.[50]

The occasion of this remark was a quarrel in 1600 between the Lord President and Council, and the Governor and the Mayor of Berwick, over the liability of the Mayor for the escape of a prisoner for debt, who had escaped from York and taken refuge in Berwick.[51] The Mayor had stretched a point in setting a bailiff to watch him, but refused to surrender him to the Tipstaff of the Council in the North. The Lord President appealed to the Privy Council, which wrote to the Mayor (5 July 1600), but meanwhile the man had escaped, and the Lord President wished to attach the Mayor for the escape. He denied the authority of the Council, and pleaded the Charter of Berwick.[52] In this he was supported by the Governor, Lord Willoughby, who had already told Burghley that if he sent any serjeant-at-arms to Berwick, 'I being Captain of the castle, or rather molehill, on the bridge, we should lay all our pot-guns to stop his passage there, for coming further; and if there were any wine better than other, he should taste the fury of that fire; but into the town he should not come'.[53] The words had been spoken but half in jest; and the Privy Council decided that the time had come to discover the limits of the authority of the Court at York, now so much questioned. Willoughby was therefore required to send up the charter of the town and his own commission and instructions. These were in February 1601 referred to the Judges, who in July reported that both by Commission and Instructions the Lord President and Council could send for any from Berwick over which by custom they had jurisdiction.[54]

The decision did not affect the Council's executive

[50] *Cal. Border Papers*, ii. No. 1268.
[51] *Ib.* ii. No. 1271.
[52] *A.P.C.* xxx. pp. 471, 718 ff.
[53] *Cal. Border Papers*, ii. No. 1269.
[54] *A.P.C.* xxx. p. 718 ff; xxxii. p. 9-14.

authority only; for its civil jurisdiction also had been called in question during the controversy. At an early stage therein, the question of prerogative between the Councils of York and Berwick had been raised; and Willoughby, while agreeing that burgesses' pleas of land in Northumberland might be tried at York, had claimed that free burgesses could be tried only by town charter, soldiers only by her Majesty's officer.[55] His death removed a stout champion of the liberties of Berwick; and there was none to offer opposition when the Judges declared that in matters of justice as in all else, Berwick was subordinate to the Council.[56] Yet it is clear from Sheffield's Instructions that the decision did not relieve the Council from the need of seeking the intervention of the Mayor before making an arrest in Berwick; and it may well be, as suggested, that it improved the position of the Bishopric, besides rousing York to emulation.

Unsuccessful though it was, the open opposition of the liberties and corporations to the authority of the Council in the North was yet very significant. It was, indeed, merely one phase of the tendency revealed even in the closing years of the sixteenth century for the middle classes to assert their supremacy in the state. The Tudor Monarchy had done its work well. It had crushed the forces of disorder, and had reunited in the Crown the sovereignty parcelled out among the over-mighty subjects of an earlier day. All had been done in alliance with its faithful Commons, the knights of the shire and the burgesses of the chartered towns. Now the time had come to adjust the relations between the allies. England seemed to stand at the parting of the ways that led to absolutism or to constitutional monarchy. In truth, the issue was never really in doubt. The Percies and the Nevilles had laid the foundations of English liberty too surely for that; and when the struggle for supremacy came, it was to the precedents created by

[55] *Cal. Border Papers* ii. No. 1269.

[56] *A.P.C.* xxxii. p. 14. He died shortly before the Judges reported

the Parliaments they controlled, and to the political theories enunciated by their adherents, that men turned to seek for weapons to combat the new pretensions of the Crown. It was only fitting, therefore, that resistance to the Council in the North should originate with the Justices of the Peace.

The contest began in September 1595 at New Malton in the North Riding, where Sir William Fairfax and three other Justices of the Peace, being required to have the peace against one Anthony Thirlethorp, who pleaded that he was already bound by the Council in the North and told them he had a *supersedeas*, took it from him and 'said it should not serve him, for they would either be Justices or no Justices, and that they would suffer no such crossing, which if they did they needed keep no sessions'. As he refused to give bond, they gave a warrant to the gaoler of York Castle to imprison him till he did so, and meanwhile imprisoned him in the Kidcote at Malton. Fearing that the *supersedeas* could not be good, when they so threatened him, Thirlethorp gave in and made the bond, but on November 4 exhibited articles to the Lord President and Council against the Justices.[57]

Two days after the scene at Malton a similar one was enacted at Halifax, in consequence of which the Queen's Attorney laid information before the Council against two of the West Riding Justices, January 1595-6. Their case was taken up by Sir John Savile, who, as their counsel, pleaded that the Council ought not to have jurisdiction in the case, which should go before the Lords in the Star Chamber, and justified the Justices on the ground that they had required bond for good behaviour as well as for the peace, whereas the Council had taken bond for the peace only.[58]

In both cases the Justices were punished;[59] but the matter could not rest there; and in July 1596 they laid

[57] Addit. MSS. 14,030 f. 72; printed in *Proc. Yorks. Archae. Soc.* iii.

[58] Ib. f. 64 ff.

[59] S. P. Dom. Eliz. cclxviii. No. 104.

before the Lords of the Council a complaint against the Council in the North, charging it with exceeding its powers. Among the charges was one that, whereas the Council's commission provided that all commissions of the peace within the limits of their jurisdiction should stand *in suo robore*, yet the Council made *supersedeas* to discharge the proceedings of the Justices of the Peace, and did not bind the malefactor to appear openly at any sessions whereby an exemplary punishment might be made and his faults published to the country; moreover, they called common people 60 or 80 miles for the peace, which might be done in the country.[60]

The Council replied that authority to take sureties for the peace had been given to them simply because that of the ordinary Justices was not enough to preserve the peace, and they thought their warrants for *supersedeas* were as good as those of any one Justice against all others. Further, their *supersedeas* was never a discharge from punishment, but only that the party be not further bound to the peace for that cause. As for publicity, they argued that punishment before the Lord President and Council at York in their open sittings was 'much more exemplary for the country than those of the private quarter sessions of any country or limit of the North parts; for which cause . . . . Sir Thomas Gargrave in his time, albeit he was Custos Rotulorum in the West Riding of Yorkshire and present at their sessions, did use to bind the offenders to the peace until they should be discharged by the Lord President and Council in such sort as is now and hath always been used'. They probably touched the real grounds of the opposition to their power of taking recognizances and granting *supersedeas*, when they pointed out that, 'whereas the charge of the subjects being bound before the Council is under 2s and no more so long as they continue bound, the charge of being bound before the Justices and appearing at the Sessions is above

[60] Ib. cclix. No. 100, printed in App. VII.

[61] Lans. 86 No. 17. The fees, of course, went to the Justices.

7s besides their travel, and so at the like charge renewed from sessions to sessions to the great charge and impoverishing of the poor subjects.[61] They also pointed out that they forbore to grant the peace in remote parts unless the information were that a Justice of the Peace within their limits had offended against the peace himself or denied to any of the subjects a warrant for the peace, or that the persons offending were of such alliance, friendship, or in service, with the Justices that the parties grieved stood in fear to demand the peace against them, or if the offence were so heinous as to require examination by the Council.[62]

Their arguments were unanswerable, as is proved by the condition of the Border counties at that very time; but the Yorkshire Justices were bent on restricting the Council's power to grant the peace to a distance of 12 miles from York,[63] if they could not destroy it altogether. Sir John Savile aimed at the latter, and in spite of the approval given by the Judges to the Council's proceedings,[64] he continued to imprison or bind to good behaviour such as sued for or obtained the Council's recognizance or *supersedeas*.[65] At last, the Lords of the Council interfered, and directed the Lord President and Council to grant writs of *supersedeas* in moderation, that bonds taken by the Justices should be allowed by the Council, and that if a party bound by the Council had previous notice that a warrant was awarded against him by the Justices, the Council should repeal its *supersedeas*.[66] No amount of care on the Council's part was likely to disarm Savile, now Baron of the Exchequer, who had recently been appointed to the northern Circuit with Yelverton, Speaker in the last Parliament, both Justices of Assize having died

[62] S. P. Dom. Eliz. cclix. No. 100.

[63] Addit. MSS. 14,030. f. 70.

[64] York to Burghley, 24 July 1596; Lans. 82. No. 31.

[65] Lans. 86. No. 17.

[66] S. P. Dom. Eliz. cclxviii. No. 104; Nov. 1598.

of gaol fever in May.[67] So the Council might still have had to complain of interruption in its work, had it not been for a device adopted at Burghley's appointment to the Presidency.

It might be, as Ellesmere said, a crying evil that a single Justice could grant a *supersedeas* against all others, but its legality was unquestionable; so when Burghley went North in August 1599, he took with him for the Council three commissions of the peace, one for each Riding.[68] Opposition was now silenced, and no further objection was made to the Council's authority, save in 1613 by York, for which the Council had no commission of the peace. Its position was now too strong to be shaken by a single city, and as we have seen the Corporation gained nothing but a little good advice for the Council, and for itself the pertinent query if it could not rule its own citizens.

The Council had thus triumphed over all opposition North of the Trent; it remained to be seen how it would fare when the contest was removed to Westminster.

[67] 5 May 1598; ib. cclxvii.

[68] Titus F. xiii. f. 301.

CHAPTER VI.

The Court at York: its Relations with the Courts at Westminster.

For seventy years the Council in the North was allowed to develop unchecked by the Courts at Westminster. This was in part due to the fact that the central courts, whose jurisdiction was chiefly civil, had no need to fear the rivalry of the Council so long as its principal jurisdiction was criminal; but even when its civil jurisdiction became more important, the common law courts could not, and the prerogative courts would not, interfere with it. It is true that Sir Nicholas Bacon, as Lord Keeper, never hesitated to check the Council when he thought that it was going beyond the limits of its commission;[1] but within those limits he allowed it to develop its civil jurisdiction unchecked. He, as well as Sir Thomas Bromley, not only permitted the Council to stay proceedings in Chancery on the ground that both parties lived within the Council's jurisdiction and might have relief from it, but also admitted that plea as a good demurrer.[2] The situation, however, was changed by Puckering's appointment as Lord Keeper in 1592; for he was a serjeant-at-law, and his training as a common lawyer predisposed him to attack the Council in the North.

During a great part of the sixteenth century the common law courts had been waging a doubtful battle with the

[1] E. g. in June 1561 he wrote to Rutland, 'At last Lent Assizes at York four persons were condemned for a robbery; two have been executed, and two reprieved by you without consent or knowledge of the Justices of Assize. None should be reprieved without the knowledge of the Justices of Assize. Except you will certify good cause before next circuit, methinks it were meet that execution should be done'. (*Cal. Rutland MSS.* p. 73).

P. 275n.

prerogative courts. These were able to adminster swifter and more equitable justice than those, thanks to their procedure and their freedom to make that distinction between a general law and its application to particular circumstances which is equity. Their superiority to the common law courts was, indeed, indentical with that which these had had over the shire and barony courts in the twelfth and thirteenth centuries. At the close of the latter century the growth of the common law courts had been checked by their surrender to the professional lawyer. In consequence, 'the common law of the fifteenth century was incapable of devising rules to govern the transactions of the changing society', and the courts administering it were useless to kings whose task it was so build up a modern state out of the ruins of mediaeval England. So men turned from the common law courts with their prematurely fixed principles, their severe rules, and their intricate and antiquated procedure, to the King's courts of equity, untrammelled as these were by the complicated technicalities of the common law.

Still, the common law courts survived and ultimately destroyed or absorbed all their rivals. This has been ascribed to the Inns of Court which kept alive the study of the common law when all the rest of the world was hastening to substitute the civil law for the customary law of the Middle Ages.[3] Yet it may be questioned whether the Inns of Court could have saved the common law courts when the students saw their cases becoming fewer and their fees smaller as litigants abandoned Westminster Hall for Whitehall; and it is probable that the common law courts were saved by the Judges themselves, who, under the incitement of a well-grounded fear that if they gave no remedy the Court of Chancery would do so, slowly modified the rules of the common law.

The clause of the Statute of Westminster II which gave a limited power to make new writs to meet cases similar

[3] Maitland, *English Law and the Renaissance.*

to those for which there was a remedy,[4] enabled the common lawyers to extend the scope of trespass until it covered the whole field of the common law. One of the developments of trespass on the case — the action of trover and conversion — enabled a dispossessed owner to recover not only his goods but also damages for misuse or destruction; another — the action of assumpsit — provided a remedy which gave effect to an improved and enlarged mode of enforcing contracts; by a third form - the action of ejectment - the lessee for term of years was allowed to recover not only damages but the land itself, even at the close of the fifteenth century, and during the Tudor period, by a series of legal fictions, this action was made to do the work of the real actions so efficaciously that it gradually reduced them to the rank of antiquarian curiosities.[5] Thus, by the close of the sixteenth century the common law courts were able to offer litigants adequate remedies for most torts, and had the means of developing a reasonable law of contract.

They were, however, hampered by their procedure until the growing influence of the lawyers in the House of Commons enabled them to use Parliament to remedy its defects by introducing into it some of the best features of the rival procedure of the prerogative courts. Thus, in 1563 the courts of record were empowered to compel the attendance of witnesses without seeking the intervention of the Chancellor, and to punish them if found guilty of perjury.[6] Unexpected results followed. (1) The jury became judges of the facts; the importance of having cases tried by local juries was lessened; and the central courts were enabled to deal with cases which at an earlier date must perforce have been tried in the country. (2) Paper pleadings displaced oral pleadings, and the distinction between those who prepared the pleadings and settled the issue, and those

[4] 13 Edw. I st. 1. c. 24.

[5] Holdsworth, ii. pp. 309, 379; iii. pp. 184, 281.

[6] 5 Eliz. c. 9.

who conducted the case in court, between the attorneys and counsel, already familiar in the prerogative courts, was introduced into the common law courts.[7] Hereby the law gained in the certainty and fixity of its principles, but lost something of its adaptability by the removal of counsel from direct contact with their clients.

Next to this statute, the most important were two statutes of 1585; of which the one enabled the judge to proceed without regarding any imperfection, defect, or want of form in the pleadings or proceedings except those specially set down in a demurrer, and to amend these imperfections; and the other enacted that a party might sue out a writ of error to the Judges of the Exchequer Chamber instead of waiting for the assembling of Parliament.[8] The common law courts were thus in a strong position for challenging the prerogative courts at the close of the sixteenth century.

At this time the legality of the Courts of Chancery and the Star Chamber was not questioned; but the other prerogative courts were attacked one after another. The Admiralty Court, the Court of Requests, and the Councils in the North and in the Marches of Wales, each in turn had unwelcome attention from the common law courts. By prohibitions they were forbidden to proceed with the hearing of matters determinable at common law; by writs of *habeas corpus*, or of *corpus cum causa*, they were prevented from obtaining execution of their decrees in Chancery.

Among these courts the Council in the North had a unique position, as it was the only one that derived its authority from a royal commission. The attack upon it therefore soon threw into the shade that on the Court of Requests which had begun in 1590; for it was useless to prove the Court of Requests illegal, as the common lawyers were seeking to do, if the commission which bestowed even greater power on the Council in the North were legal. It may be that this circumstance first drew the attention

[7] Holdsworth, iii. p. 491 ff.

[8] 27 Eliz. cc. 5, 9.

of the Courts at Westminster to the one at York; but if so, they soon discovered a special grievance against it. Members of the Council claimed in 1598 that it heard more than a thousand cases a year,[9] and in 1609 Coke declared that 'they have above two thousand (causes) depending at one time, and having but five counties and three towns, at one sitting there were about 450 causes at hearing; whereas the Chancery that extends into 41 counties English and 12 in Wales, in all 53, had in Easter term but 95 to be heard, and in Trinity term but 72'.[10] As the Judges were paid out of fees, it is easy to understand the persistence with which they attacked the northern court, belittling the legal attainments of the learned Councillors,[11] and denying the legality of its commission.[12]

Coke's comparison of the number of cases heard at York with the number heard, not in King's Bench or Common Pleas, but in Chancery, is specially interesting as throwing some light on the otherwise difficult problem presented by the action of the Lord Keepers Puckering and Egerton in joining in the attack on the Council at a time when the authority of even the supreme Court of Equity over which they presided was not unchallenged.

Puckering, who as a common lawyer was probably already jealous of the Council's authority, refused to follow the example of his predecessors, and granted an attachment against the defendant in a suit before him, who obtained from the Council an injunction to stay proceedings in Chancery, or shew cause. Huntingdon, then President, stayed the attachment, and informed Egerton, Master of the Rolls, that precedent was in favour of the Injunction, and that he intended to continue to issue them unless it pleased Her Majesty or the Lords of the Council to direct the contrary.[13] The matter was dropped at that time; but it

[9] Lans. 86. No. 17.
[10] Coke, *Rep.* xii. p. 50.
[11] *Ib.*; Lans. 86. No. 17.
[12] *Hatfield Cal.* vii. p. 492.
[13] Lans. 86. No. 17.

is probable that this action of Puckering's encouraged the Admiralty Court to issue an Injunction to the Council on behalf of Anthony Atkinson, Searcher of Hull,[14] and others, commissioners of the Admiralty north of the Trent. There had been trouble over this commission before, in 1589, when Atkinson wrote to Julius Caesar,[15] complaining that he was 'letted from the execution of his commission by the Council in York', and informing him that 'the Council here[16] saith that if pirates' goods be robbed upon the seas and sold upon land, that the Lord Admiral hath no authority upon land, and I have stand (sic) in his honour's title there, and when the matter was debated by our learned Counsel before the Queen's Council, being weary of the matter for that I told them his Honour would not take it well, so having no other excuse for dealing with us, they have writ to my Lord President that we are not fit to execute the Commission, but what we have done we will justify to the Council, or else I shall be out of all credit with you'. Twice the commission had been revoked, the revocations being extant at York in 1595. Now, Atkinson and the rest were being sued at York for wrongs done by them under colour of the commission when the Admiralty, encouraged probably by Puckering's example, sent to the Council what Huntingdon calls 'an Instrument in the nature of an Injunction'. As in the case of Chancery, the President, affecting to believe that the Injunction was issued without the knowledge either of the Lord Admiral or of Julius Caesar, informed the latter that he had thought good to proceed with the cases rather than to admit and allow thereof.[17]

No further attack was made on the Council at that time by any of the Courts at Westminster; but a few months

[14] Addit. MSS. 12,507. f. 227, 9 March 1595; *A. P. C.* xxvi. p. 166, 12 Sept. 1596.

[15] Lans. 147 f. 258.

[16] I. e. York, where the letter was written, 11 Aug. 1589.

[17] Addit. MSS. 12,507. f. 227; Huntingdon to Caesar.

later the revolt of the West Riding Justices of Peace against the Council's authority drew on the common law courts to assert afresh their superiority to the Court at York. For Serjeant Savile, the leader of the revolt, had a two-fold grudge against the Council, and both as a Justice of Peace and as a common lawyer he was equally ready to impugn its proceeding.[18]

The revolt of the Justices had just become serious, when a particularly injudicious attack was made on the Council in June 1596, for which Savile was probably responsible, as least in part. One Richard Atkinson of Ripon had about the year 1586 been imprisoned by the Justices at Ripon, and on release had begun an action for false imprisonment against Rounder, the Gaoler there. Huntingdon, thinking it was to the disgrace of the Justices and their lawful proceedings for their judicial acts to be examined in a Common Law Court, called the parties before his own Council, and the case dropped. After Huntingdon's death Atkinson renewed his action in Common Pleas against the gaoler, who had simply obeyed the magistrates. Called before the Council in 1596, he so acted that they with one accord sent him to the Castle of York. Released after 4 days, he procured process of attachment against the tipstaff who arrested, and Mr. Redhead, the gaoler who imprisoned him. The Privy Council at once ordered the Council in the North to take bond from Atkinson for his appearance before the Lords, and required the Lord Chief Justice of Common Pleas to stay the suits against Rounder, the tip-staff, and Redhead, to order the release of the last, and to call before him and admonish all the counsel and attorneys who had taken part with Atkinson.[19]

Once more, it is not unlikely that Savile was one, perhaps the leader, of the unnamed Justices of the Peace who in July 1596 laid an information against the Council as exceeding its commission, to which information they

[18] P. 221 f.

[19] *Halfield Cat.* vi. pp. 252, 211 ; *A. P. C.* xxv. p. 468 485.

replied at length in August 1596.[20] All of these charges and the answers thereto have already been dealt with in earlier chapters, so that it is necessary to mention here only the first two articles, which accused the Council (1) of holding plea of titles and actions of all kinds between persons of all estates without respect of their abilities, whereas the commission authorised them to deal with such matters only when one or both was too poor to follow the course of the common law; and (2) of making Injunctions and orders to stay proceedings in suits at the common law and in the Chancery. The Justices of Assize had expressed their approval of the Council's proceedings,[21] and the matter seemed at an end, when Egerton, now Lord Keeper, intervened.

The Council, in its reply to the second charge, had, while denying the issue of injunctions to stay suits at common law, admitted that it issued them to stay suits in the Chancery or shew cause, when both parties dwelt within the commission. Egerton wrote to the Council expressing his dislike of this course of proceeding, which he plainly regarded as derogatory to the supreme Court of Equity in which he gave judgement. The Council defended their practice as a check on malicious proceedings, and at the same time wrote to Burghley, detailing their practice in such cases and claiming precedent.[22] Three weeks later Burghley wrote to the Archbishop of York, saying,[23] 'And herein I have had some speech with Mr. Ferne, and have showed my opinion that I think it against good reason, that where a suit is begun in the Chancery by any plaintiff, that he should be restrained from following his suit at the request of the defendant; which my conceit hath moved me to forbear herein to deal with my Lord Keeper. But if

[20] Lans. 82. No. 31; S. P. Dom. Eliz. cclix. No. 100.

[21] Ib.

[22] Lans. 83. No. 27, 8 Jan. 1597; this is wrongly transcribed and printed in Strype's *Annals*, no. ccv, as 8 June.

[23] *Corres. of M. Hutton*, p. 112; 30 Jan. 1597.

Mr. Ferne shall, as he saith he will, show me some precedent of the yielding of the Chancery to such request, I will thereupon deal with my Lord Keeper, having some colour thereby to press the same'.

Several precedents were forthcoming; but Egerton was not prepared to accept the rule established by them. So a test case was made out of a suit in Chancery between Peter Wasting, a tailor living in York, and Anna Welbury and other defendants.[24] The Council, following its usual practice, sent him a letter missive to stay the suit in Chancery or show cause. It seems that he ignored the letter, for a second one was sent. Yet his case was a good one, since this suit was for the stay of proceedings at the common law upon an obligation, a relief that the Council, by its own admission, could not give. That the decision on this particular case must go against the Council was a foregone conclusion, and no better one could have been found on which to base a general ruling that the Council had no authority to issue process for stay of proceedings in Chancery, not only in this case, but in any case. So the Lord Keeper ordered the Clerks to bring into Court the commission granted to the Council, and invited the Justices of Assize to aid him in determining the limits of the authority given by it. It soon appeared that the larger question of the validity of the commission might have to be considered. For Atkinson's suit in Common Pleas had been followed by one in King's Bench, out of which an attachment had been issued against William Cardinal, one of the Council, at the suit of Redhead, the Gaoler of York Castle, against whom damages had been awarded by the Council for unlawful and rigorous imprisonment of one Fletcher. On this occasion, the Chief Justice had at the Bar publicly called in question the validity of the Council's commission.[25] It was therefore high time that the whole

[24] Lans. 86. No. 17; Harl. 1576. f. 174.

[25] *Hatfield Cal.* vii. p. 492, Council in the North to Burghley, 24 Nov. 1597.

question of its authority and jurisdiction should be gone into and its limits settled; especially as Savile continued to flout the Council's *supersedeas* and to lead the Justices in refusing to help York and Hull in defraying the cost of the ship sent to Cadiz. Therefore, when Wasting's case came on again in February 1598, the Lord Keeper was assisted by the two Lord Chief Justices and Mr. Justice Beaumont, one of the Justices of Assize on the Northern Circuit.[26] The Council sought the intervention of the Lords of the Council;[27] but Burghley had already expressed his opinion against the Council's claim, and there is no reason to believe that the other lords of the Council differed from him. The Privy Council was indeed represented by counsel when the decision was given, but no strenuous defence of the Council in the North was offered, and on 6 February 1598 the Court gave its decision that the Council could not stay proceedings in any superior Court at Westminster. The effect of this decision was to deprive the Council of the power it had hitherto had of determining for itself what matters it could deal with in equity, and to place it in the same subordinate position to Chancery that it had always held to the Court of Star Chamber. There can be no doubt that the decision was agreeable with public policy, which required that there should not be two co-ordinate Courts of Chancery; and it is probable that the Council gained more than it lost. For Egerton, having vindicated the authority of his own Court, expressed his determination to uphold the Council's authority and jurisdiction, so far as it might extend, and declared that it was his rule to remit to the Council all causes that he found to be preferred in Chancery for the vexation of the adverse party where they all were 'comorant' in the North parts.[28] Egerton kept his word; s the interests of the people north of the Trent were safeguarded against malicious prosecution

[26] Harl. 1576. f. 174

[27] Lans. 86. No. 17.

[28] Harl. 1576. f. 174.

at Westminster, while the Council gained a powerful champion not only against the local courts, but also against the Courts at Westminster should these impugn its authority.

The report of the decision does not enlighten us as to whether the Court did or did not consider the validity of the Council's commission. The question may have been dropped, but if it was not, there can be no doubt that the decision was in favour of the Council, for had it been adverse Coke would certainly have quoted it, just as he quoted the decision given this same year in the case of Stepney v. Flood as finally deciding the illegality of the Court of Requests. It is this very decision, indeed, that makes it not unlikely that the Court did examine the validity of the commission on the 6th of February and decide that it was legal. For Anderson C. J. and Glanvil, J. in giving judgement against the Court of Requests, said, 'This Courth hath not any power by commission, by statute, or by common law'.[29] The implication that a commission had equal value with an Act of Parliament as giving authority to exercise a jurisdiction in equity which was identical with that of the Council in the North, is the more remarkable in that the speaker was the very man who had a few months before publicly questioned the validity of the Council's commission. Whether the legality of the Council was admitted or not, the fact remains that the Chief Justices refrained from any further attack on it till Coke's elevation to the Bench in 1606.

An admission, explicit or implicit, of the Council's legality did not, however, hinder the common lawyers from seeking to confine its jurisdiction within the narrowest limits possible, and the struggle, momentarily abandoned at Westminster, was continued in the North.

Savile's submission to the Privy Council in the ship-money controversy had been rewarded, or purchased, by his elevation to the Bench as a Baron of the Exchequer,

[29] Coke, *Rep.* i. p. 646.

and when Justice Beaumont and Serjeant Drew died of gaol fever in May 1598, he and Serjeant Yelverton were appointed Justices of Assize on the northern circuit. At once the disputes between Savile and the Council were renewed, the Baron always gainsaying against the Court at York. The particular ground of the new quarrel is nowhere precisely stated; but it is probable that Savile was now taking exception to the Council's execution of the penal laws, again in the interests of the clothiers, denying the Council's power to execute, not only the Tillage Act of 1597, but any penal statute, except by the common law method of inquest and verdict.[30]

Nor was Savile's colleague, Yelverton, behind him in seeking to discredit the Council, although his methods were more subtle. Since first the Justices of Assize had been included in the Council's commissions, no other commission of oyer and terminer or of gaol delivery had ever been read in the northern counties but the general one, and the Justices had always taken their seats among the other commissioners in the Court, at the Council table, and in the Cathedral, in the order in which they were named in the commissions, the place of honour being given to the Lord President, or in his absence to the Vice-President. Moreover, the President and other members of the Council had always sat on the Bench with the Justices of Assize, not only when the commissions of oyer and terminer and gaol delivery were read, but also when the commission of *Nisi Prius* was read, although they retired to one end of the Hall to hold the sessions of oyer and terminer with one judge, while the other held the court of *Nisi Prius* at the other end. At the summer Assizes in 1600, however, Yelverton, coming from *Nisi Prius* to the end of the Hall where Savile and Lord Eure, then Vice-President, were sitting for gaol delivery, thrust past Eure and sat next to Savile, as he had already done two days before at the

[30] S. P. Dom. Eliz. cclxvii. 5 May 1598; cclxxi. No. 70, Ferne to Beale, 3 July 1599.

Minster sermon. No immediate notice was taken of his behaviour. So at the next summer Assizes when Lord Burghley himself was present, he not only omitted the names of the Lord President and Council from the gaol delivery, reading only the private commission given to the Justices and the Clerks of Assize, but, when Burghley came to him and sat by him on the Bench for the reading of the commission of *Nisi Prius*, he called for the Abridgement of the Statutes and turned to the statute of 20 R. II c. 3. forbidding barons and others to sit by the Justice of *Nisi Prius* when he is on the Bench hearing causes. This statute he caused to be publicly read, and turning to Lord Burghley, prayed him to hear this and to observe it; whereupon the Lord President left the Hall. Yelverton made his conduct at York more significant by not reading the statute at any other place on his circuit.[31]

The Council at York at once complained to the Privy Council, who at first gave them little satisfaction, informing them that the Queen misliked the place taken by the Vice-President when the Justices of Assize were in their circuit, but adding that no alteration in the custom was to be allowed, so the Assize Rolls were to be searched for 25 or 30 years back. The Rolls proved that precedent was wholly for the Lord President and Council both in the matter of the commissions to be read, and in the place taken by the Lord President and Vice-President.[32]

Meanwhile, Sir Robert Cecil had taken up his brother's cause, and Yelverton was summoned before the Lords of the Council sitting in the Star Chamber. The questions of the place to be taken by the Vice-President, and of the commission to be read, were dealt with first, and on the 9th of June 1602, an order was made, 'That the Vice-President of the Council at York shall take place before the Justice of Assize, and that the Standing Commission

[31] Ib. cclxxxiii. No. 42; cclxxxiii a. No. 82, adducing the evidence of the Assize Rolls since 4 Eliz.; Baildon, *Les Reportes*, p 150.

[32] S. P. Dom. Eliz. cclxxxiii. Nos. 43, 82.

shall be read when the Vice-President sitteth with the Justices of Assize and not the commission brought by the Justices of Assize but the commission brought by the Justices of Assize may be read upon the Monday when the Vice-President is not there'.[33]

Two days later, on the 11th, the case between Yelverton and Burghley was taken before the whole Council. What followed is best related in the words of the reporter:[34] — 'There Secretary Cecil reprehended the Judge that he had, out of the pride of his heart, done thus to disgrace the said Lord Burghley. The judge replied that he had shamed him.[35] The Lord Admiral was bitter against the Judge, and said that he thought that the professors of the law would press their honours, titles and dignities from them. The Lord Keeper and both the Chief Justices for the Judge. The Secretary said that the Council of State could allow or order the placing of persons of honour or office: but the Chief Justice[36] answered that the Council of State could not alter the course of the Common Law, 'he would be sorry it could'. It was then ruled that the Lord Burghley had been shamed, and that the Judge should give him place. And it was also moved there that the Judge should make confession at York, and there submit himself, but on this the Court then varied. But on the Sabbath day next following at the Council table at the Court at Greenwich the Chief Justice then absent it was ordered and decreed that the Judge should make his confession at the Assizes at York next following, and there should make his submission. But the Queen of her grace, and on his humble petition, dispensed with this, and thereupon he changed his circuit'. Yelverton's successor was approved by Burghley

[33] *A.P.C.* xxxii. p. 488, 9 June 1602.

[34] Baildon, *Les Reportes*, p. 150.

[35] Does this mean that Burghley had put disgrace on Yelverton, or has the word 'not' been omitted from what was really a denial that Burghley had been shamed? The ruling of the Council that Burghley had been shamed implies that Yelverton had denied it.

[36] I.e. Sir John Popham.

as 'a grave and learned judge, one greatly respected in these parts, *et secundum animum meum*',[37] and for a time there was peace.

'The tedious business of the Marches',[38] the dispute between the Council in the Marches and the Court of King's Bench which began in 1604, did not directly affect the Council in the North to any great extent. The matters at issue were soon narrowed to the single question whether the 'Marches', in which the Council had jurisdiction by statute, did or did not include the Four English Shires. That they did not, is fairly clear, but a decision either way could not affect the jurisdiction of the Council in the North, derived as that was from a commission. The Council's interest in the dispute was in fact limited to the agreement by which counsel had narrowed the issue, namely, that the King's Bench had the general right and duty of seeing that courts like that of the Marches kept within their due limits, but that it was bound to guard against abuse of the writ of *habeas corpus*. The effect of this was to place the Council in the North in the same position with respect to the Common Law Courts that it had held with respect to Chancery since 1598.

Had the agreement been observed as was the corresponding understanding with Chancery, the Council in the North might soon have developed into a thoroughly useful local court exercising the same jurisdiction as a modern County Court, and like it controlled by the central courts of law and equity. Unfortunately, the agreement was hardly made before it was broken as a consequence of Coke's elevation to the Bench in 1606.

Coke was the most learned common lawyer of his day, but his experience as Attorney-general for the Crown had accustomed him to manipulate and to misinterpret according to the need of the moment the precedents that he relied on.[39] All advocates do this to some extent; but the ordinary

[37] *Hatfield Cal.* xii. p. 238, Burghley to Cecil, 20. July 1602.

[38] Skeel, *The Council in the Marches of Wales*, p. 130-1.

[39] E.g. in the several cases concerning the Dacre lands, pp. 225, 226, 365-6.

counsel's freedom of interpretation is restrained by the knowledge that he must meet the criticism of those who know the precedents as well as he does. In Coke's case this check hardly existed, since from the depths of his great learning he was able to unearth precedents of which no one else had ever heard. The habits acquired at the Bar, Coke took with him to the Bench. As a Judge he remained an Advocate; and the learning he had misused for the Crown, he misused for the common law system of which he was now the official head. His colleagues knew this; and some of them 'did once very roundly let the Lord Coke know their minds, that he was not such a master of the law as he did take on him, to deliver what he list for law, and to despise all other'.[40] So his great services to the cause of law and liberty must not blind us to the fact that he deliberately used his knowledge to serve, not the cause of truth, but his own interest. That interest he found to be imperilled by the popularity of the prerogative courts, which with drew from the common law courts many cases — and fees — which might otherwise have been taken there. It was therefore only to be expected that the difference between the common law courts and the courts of equity, rendered more acute by the reforms introduced into the former in rivalry of the latter, should come to a head during the ten years that Coke was Lord Chief Justice.

He began the contest by repudiating an agreement with the Admiralty Court arrived at in 1575.[41] By means of prohibitions and writs of *habeas corpus*, serious encroachments were made on the jurisdiction of the Court, regardless of the fact that neither the procedure of the common law courts nor the law applied by them was nearly so well fitted as those of the Admiralty to deal with the cases that Coke sought to withdraw from its jurisdiction. The same weapons were turned against the Councils in the Marches

[40] Archbishop Abbott to Ellesmere, 22 Jan. 1612, reporting a conversation with Justice Williams (*Egerton Papers*, p. 448).

[41] Holdsworth, i. p. 322.

of Wales and in the North, and before the end of 1606 Sheffield had to lay before the Privy Council a complaint on behalf of the Council at York that they were interrupted in the exercise of their jurisdiction by some course lately taken by the Judges of the King's Bench and the Common Pleas.[42] Special complaint was made of the conduct of one Bell who had obtained a prohibition out of Common Pleas in a suit before the Council which was in the nature of a replevin by English bill.[43] Such cases had been heard by the Council since at least 1556, and if we regard them as mere recoveries of distresses, there seems no reason why they should not; but as a matter of fact, a replevin, like an avowry, was a very convenient way of establishing a title to freehold land, and there can be no doubt that the pleas of replevin held by the Council were frequently brought forward to try titles to real property. The Council could plead that many who brought such suits were too poor to sue at the common law; but the courts could point to such a case as that of the Dacre brothers who had in 1566 sought by such a suit to establish their title to a whole barony.[44] The prohibition granted to Bell was therefore very important; but its importance was increased by Bell's conduct, who 'sought . . . to possess the people in a market place with an assurance that the Court before [the Lord President] and that Council must down, with many other like speeches, thereby to prepare the minds of the vulgar to resist or contemn that authority, which hath had so long continuance and given so much ease to those parts'. The Council was therefore required to send Bell before the Lords of the Council, and meanwhile advised to confer with the Judges on the prohibition.[45]

Conference was of course useless, and prohibitions were

[42] Hatfield MSS, cxix. No. 80, the Privy Council to the President of the Council at York, 1606.

[43] Hughes, *Abridgement*, p. 1556 (7); Coke, *Rep.* xiii. p. 31.

[44] Hobart, *Rep.* p.109 ff.

[45] Hatfield MSS. cxix. No. 80.

soon multiplied. The sheriff of Yorkshire was prohibited from preferring an English bill in the nature of an action upon the case upon a trover and conversion, on the ground that he could have a remedy at common law and was not too poor to seek it. Prohibition was granted in a suit by Lord Wharton in the nature of an action of trespass at common law, as well as in a suit in the nature of an action of debt. Distresses, contracts, trespasses, debts, if all these were taken from the Council, what business would be left to it?[46] The prohibitions were accompanied by attachments awarded out of the same courts against parties complaining before the Council, and by actions of battery and false imprisonment as well against the parties for whom decrees had been made as against the King's Messenger and other officers authorised by the Court at York for the execution of the same decrees.[47]

Most of the prohibitions, to the number of 50 or 60 in one term, were granted out of the Common Pleas; in one case, after a prohibition had been refused by King's Bench. So, on Ash Wednesday in 1608, Coke was sent for to answer the complaint before the King and the Council. He satisfied the Lord Chancellor on the four cases cited above, and was allowed to depart.[48] In Michaelmas Term, however, Serjeant Phillips, on behalf of a jury of Attorneys in the Court of Common Pleas and the subjects of the North of England, moved at the Bar 10 Articles of Grievances against the Council.[49] After accusing the President and Council of calling Attorneys before them, of refusing their privilege, and of bidding them stay suits in the Court at their peril, the Articles went on to charge the Council with awarding execution of their decrees and imprisoning those who refused obedience, with sequestering all the lands of those

[46] Coke, *Rep.* xiii. p. 31, 32; Hughes, *op. cit.* p. 1558 (8).

[47] Titus B. i. 505; Grievances of the Lord President and Council in the North v. The Justices of the King's Bench and Common Pleas in granting Prohibitions against the said Lord President and Council's proceedings.

[48] Coke, *Rep.* xiii. p. 30.

[49] Rant's Reports, Lans. 1062. f. 224b.

who refused to answer, and with rejecting pleas of outlawry. In short, they related what Coke called the 'many intolerable grievances of the subjects offered by the said Council to many of his Majesty's subjects, in derogation of the King's laws in prejudice of the King's profits, in hindrance of the due proceedings of this Court, prayed the Court, according to law and justice, to grant several prohibitions in all those several causes', and concluded by denying the whole jurisdiction of the Council in the North. The Court at once admitted the justice of the petition, and denied the legality of the Council's jurisdiction.

The Lord President and Council laid their grievances before the King,[50] urging the inconveniences that had already ensued and were likely to increase; namely, the contempt into which the authority of the Council was falling, the injustice to many poor people who dare not sue to the Council for fear of prohibitions and attachments, the re-opening of decided cases by contentious persons, and the contempt of the Council's process and commands. The Judges were thereupon required to answer the complaints exhibited to the King against them by the Lord President of York and the Lord President of Wales, who had similar grievances. They did so, apparently in February 1609; and it is noteworthy that Coke's report of the answers - the only one extant - deals almost entirely with the Council at York.[51] This was, indeed, only to be expected; for it was useless to prove illegal the powers claimed by the Lord President of Wales under the statute of 1543, if those claimed by the Lord President of York under a commission of oyer and terminer were legal.

After giving a wholly erroneous account of the events leading to the erection of the Council which he ascribes to the year 1539, he quotes Llandaff's commission of the following year, and goes on to declare the commission entirely illegal, since none of the breaches of the peace

[50] Titus B. i. 505.

[51] Coke, *Rep.* xii. p. 50. ff.

mentioned can be tried except by common law; as for the second part of the commission giving jurisdiction in causes between party and party, no such general authority can be given by commission either to determine real actions according to law, or any actions according to equity. The grounds of this assertion have been already dealt with,[52] and no further reference is necessary. The Judges then went on to defend the granting of writs of *habeas corpus* and prohibitions, on the ground that the Instructions referred to in the Council's commission were kept secret, so that no man could know the limits of its jurisdiction until examined in Court. Then they excused the number of prohibitions by the number of cases heard by the Council, 2,000 a year where Chancery had but 167 in two terms. Many of these prohibitions, we learn, were in suits upon penal laws, 'many of them limited to the Courts at Westminster, but all of them without question out of their jurisdiction'. Not a word here of the decision reported by Dyer that Justices of Oyer and Terminer could execute the penal statutes, although it is given in the same volume as Scroggs' Case which was used by Coke to impugn the Council's jurisdiction! It is probable that we must see here the influence of Sir John Savile, who had recently quarrelled with Salisbury over a Clothiers' Bill which he had been chosen by Sheffield to see through the House of Commons.[53] As for their future action, the Judges suggested (1) that the Instructions should be enrolled in the Chancery, so that the Council's jurisdiction might be known, and (2) that the Presidents should appoint learned Counsel to attend the Courts at Westminster, who should inform the Judges of the Council's jurisdiction, to whom they promised to give a day before granting any writ, to shew cause to the contrary.

[52] Pp. 311-ff.

[53] June 1607; Cartwright, *Chapters in the History of Yorkshire*, p. 184. This is not the Baron of the Exchequer, who died in this year, but Sir John Savile of Howley, the heir to the elder Savile's influence among the clothiers of the West Riding.

The Judges, having given their answers, were desired to retire into the next room while the Lords had a long conference among themselves. At last the Judges were recalled, and Salisbury gave the Council's resolutions:

'1. That the Instructions should be recorded for so much as concerned either criminal causes, or causes between party and party; as for matter of state, if any be, the same not to be published.

'2. That it was necessary that both Councils should be within the survey of Westminster-hall.

'3. The motion was well allowed that the Presidents and Councils should have counsel learned in every Court; and that upon motion made in open Court, upon any prohibition to either of them, day should be given to shew cause.

'4. The Lord Treasurer repeated the sentence, and said, true it is, *ubi lex aut vaga aut incerta, miserima est servitus*, where men's estates and fortunes should be decided by discretion'.[54]

Steps were taken to carry out these resolutions by issuing (21 June, 1609) a new Commission and Instructions to the Lord President of the Council in the North which were duly enrolled in the Chancery.[55] The Instructions, which were henceforth appended to the Commission as a Schedule, were in the main merely a summary of the Council's procedure and practice as it had developed during the ninety years of its existence, and had been determined by the recent controversy. As we read them we may be tempted to agree with Hyde in thinking that they greatly increased the Council's powers;[56] yet in doing so we should be entirely wrong.

Of the fifty-six Articles in the new Instructions forty-three are identical—save for a little re-arrangement as to order—with forty-two of the fifty-three Articles of the Instructions

[54] Coke, *Rep.* xii. p. 56.

[55] Pat. 7 Jac. I. p. 2. m. 27d.

[56] Hyde's Argument before the Lords; see p.

of 1603,[57] of which six Articles disappear as applying only to conditions no longer existing,[58] and five are merged in the thirteen new Articles. Of these, two (Arts. 33, 34) direct that all cases shall be heard in open court only and that none shall be taken in vacation-time save such as call for immediate redress; one (Art. 56) is an injunction to the Justices of the Peace, Sheriffs, etc., to obey and aid the Council; and nine (Arts, 18-20, 22, 24, 26, 27, 31, 39) define the judicial powers hitherto conferred on the Council by its Commission, which was now shortened to a direction to hear and determine the offences, etc. contained in the annexed Schedule within the specified North parts, in such manner as by the said Schedule is limited and appointed. How little foundation there was for Hyde's assertion that these instructions greatly increased the Council's power, will appear if the following summary of the ten Articles defining its judicial powers be compared with the account given above of the nature and extent of its jurisdiction under the Tudors.

The 18th Article directs the President, or Vice-president, and at least three of the Council, whereof two to be Councillors of the king's fee in ordinary, i.e. learned Councillors, to examine, search out and repress all treasons, murders and other felonies arising within the North parts, and to imprison all such offenders until they shall be lawfully tried or by sufficient warrant delivered. The 19th Article gives them full power and authority 'to examine, hear, order, and determine as well by examination of witnesses and of the parties themselves upon interrogatories as by all other good ways and means by their wisdoms and discretions as heretofore hath been observed by the said Lord President and Council for the time being all and all manner

[57] Arts. 1, 2, 14-17, 19, 21-31, 33-5, 37-44, 48, 51-3.

[58] Arts. 3, 45-7, 49, 50, dealing respectively with the return of certificates of recusants to the Exchequer every six months, with fugitives to Carlisle and Berwick, with the execution of the Tillage and Enclosure Acts in the Border shires, with the need for severity, and with the lands and friends of fugitives over the sea.

of forgeries, exactions, extortions, briberies and begging, or other unlawful gathering of money for any cause or pretence whatsoever, maintenances, champerties, embraceries, oppressions, vexatious conspiracies, embezzling, rasing or defacing of any bills, pleadings, orders, rules, proceedings, or records of the said Court, escapes, riots, routes and other unlawful assemblies, forestalling and engrossing corruptions, falsehoods, frauds, and all other offences, contempts and misdemeanours done or committed .... against the law of this Realm by any Sheriffs, Justice of the Peace (etc.), within the said counties, cities, Bishopric, towns, or places aforesaid, and to punish the same according to their wisdoms and discretions as well by fine and imprisonment as otherwise according to the quality of their offences as to them shall seem meet, and further to make inquiry of and to punish all unlawful exactions by Muster-master's. The 20th Article directs them to hear and determine all perjuries in the North parts as the Lord President and Council used to do before the statute of Elizabeth for the punishing of perjury, provided they impose no less a penalty than is contained in that statute. The 22nd Article empowers them to make such proclamations in the king's name as are necessary for the quiet of the country and for the apprehension of malefactors and to punish contempts of the same by fine or imprisonment. The 23rd Article gives them authority to examine, hear and determine as well upon bill exhibited by the plaintiff and the answer of the defendant thereunto made upon oath and by examination of witnesses to be discreetly and sincerely taken as by all other good ways and means by their wisdoms and discretions as heretofore hath been used by the said Lord President and Council for the time being, all and all manner of complaints, petitions, and informations ... for any cause or matter arising within the Counties, towns or places before mentioned as well for or touching lands, tenements, and other hereditaments either of freehold or customary or copyhold as goods and chattels, for which there

shall upon due proof appear clear matter for the plaintiff to be relieved in equity and good conscience, and that he is without remedy by the common law'. The 24th Article empowers them if any person having had quiet possession for three years of any lands, tenements or hereditaments either of freehold, leasehold, customary, or copyhold, has been forcibly put out of the same, to give him possession of the same till the title be decided by the due course of the common law, and to give costs to the defendant if the plaintiff fails to prove force or continual vexation. The 26th Article gives them authority to hear and determine all debts, covenants, and other personal actions arising within their jurisdiction which do not concern the title or interest of freehold, customary, or copyhold, or chattel real. The 27th Article gives them power, lands in the North being commonly leased for term of years or at will for very small rents, to hear and determine all debts upon such leases being under the sum of forty pounds, where nothing is in question but whether the rent has been paid or not. The 31st Article gives them power in all the above mentioned cases to grant, award, and send forth all such process, letters, and commissions under the signet there as heretofore hath been there used and accustomed; and the 39th Article empowers them to set and mitigate fines upon offenders and to compound with such as forfeit to the king any bond or recognizance taken by the Council, provided that no composition is made without just cause and due regard to the quality and quantity of the offence. These Articles make it quite clear that if the Council was now more secure within the limits of its jurisdiction, those limits were narrower than they had been in the sixteenth century, for the Council being forbidden to entertain suits involving titles to land, replevins by English bill were things of the past.

With the new Instructions was sent a Proclamation that such parts of them as related to the jurisdiction of the Council should be recorded in each Court where all men

might see them, that the sheriffs and other officers should execute the Council's decrees and that the subjects should not seek prohibitions and writs of *habeas corpus* in such matters as would call in question the Council's jurisdiction.[59]

The King and the Lord President had every reason to expect the Westminster Judges would cease from troubling the Northern Court now that their demand for the enrolling of the Instructions had been met. Instead, it was at once made clear that the opposition of the Judges was implacable, and barely a month after James sealed the new commission, Sheffield was writing dolefully to Salisbury:[60] 'We are still so discomposed in the course of justice with the Judges' prohibitions that I assure you my grief is very great that often the people come hither for relief for their wrongs and crave it at my hands, I have no means to afford it them. I beseech you to find some consideration of it, for else the king had better not have any government established than not to afford a means thereby to right his subjects when they have just cause of complaint'.

Finally, formal complaint was made to the King[61] that notwithstanding their promises, the Judges had granted more prohibitions during the Council's last session in July than at any time before. The worst case was one given out of court and antedated, in so mean a matter as a hunting-match, although the Judges had themselves offered not to give prohibitions out of court and not to antedate them. James was very angry, and declared that he could not without evidence believe that the Judges had so flouted him; 'but if he find it to be true, he vows and affirms it with many oaths that he will make those Judges know he is their Sovereign and feel what his power is, and that he can be served with as honest men and as well learned as

[59] S. P. Dom. Jas. I. xxxvii. No. 35. The Proclamation is undated, but comparison with Coke's Report suggests that for the date 1607 given in the Calendar should be substituted 1609.

[60] 22 July 1609, ib. xlvii. No. 47.

[61] Hatfield MSS. cxxviii. No. 1; Lake to Salisbury, 18 Oct. 1609.

they, who shall better understand how to demean themselves towards him'; he added that 'he shall not marvel to find contumacy and disobedience in the people if the judges who should give them example by reverence and duty, make their glory to neglect his displeasure. The Judges which his Majesty means are the Judges of the Common Pleas". Salisbury was directed to inquire into the charges but what the result was, is not recorded.

It is, however, certain that the prohibitions did not cease;[62] and at last, in Hilary 11 Jac., Coke laid it down 'for a general rule and maxim of law, that if any Court of Equity doth intermeddle with matters, that are properly at the Common Law, and which do concern matter of Freehold, they are to be prohibited', because, 'after a Judgment or a Decree given in a Court of Equity, the party hath no remedy, for that no error or attaint lieth in the Case, although the Judgment of Decree be erroneous'.[63] This rule, which had been prayed by the Attorneys in 1608, was given with respect to the Court of Requests, but of course it had regard to the Council in the North as well.

Two years later, however, direct attack was made on the Council itself; and in Trinity Term, 1616, the Lord Chancellor, aided by the Judges, decided in the case of the King and Lord Hunsdon against the Countess Dowager of Arundel that depositions taken before the Council at York could not be given as evidence in other courts.[64] The depositions in question had originally been given in Leonard Dacre's suit in the nature of a replevin in 1566, and just twenty-two years earlier Coke as Attorney-general had produced those same depositions as evidence upon an office taken at Carlisle before Ellesmere himself, then Master of the Rolls, who had admitted them without question.[65] To do so, however, was to admit the Council's

[62] In 1612, Guy v. Sedgewick for debt (Moore, *Rep.* 1220); and Baker v. Dickeson for Replevin and Avowry (Bulstrode, *Rep.* i. p. 110).

[63] Bulstrode, *Rep.* ii. p. 197.

[64] Hobart, *Rep.* p. 109. *ff.*

[65] *Household Books of Lord William Howard*, (Surtees Soc. p. 403 *ff.*).

claim to hold such pleas as well as its claim to be a Court of Record, claims that the Lord Chancellor and the Lord Chief Justice were equally unwilling to admit. Fortunately for them, it was now to the King's interest that the depositions should *not* be used as evidence; so Ellesmere and Coke were allowed without question to rescind their own judgement and declare inadmissible the very evidence for which they themselves had once directed the Secretary at York to make diligent search.[66]

Coke's judicial career, however, was nearly an end now, and with it his power to trouble the Council in the North. Encouraged by his success against the Courts of Requests at Whitehall and at York, he had gone on to attack the court of Chancery itself, only to meet defeat in his dispute with the Lord Chancellor over the latter's right to issue Injunctions after judgement given in the common law courts. James's small stock of patience with the stiffnecked opponent of his prerogative was now worn out, and on November 15 Coke was dismissed from office. Three months later the Lord Chancellor with infinite trouble forced the King to accept his own resignation, and James was at last free to appoint as leaders of both the equity and the common law courts men who could be trusted to uphold the royal prerogative in the administration of justice.[67]

With Francis Bacon as Lord Keeper there was of course no likelihood of renewed attacks by Chancery on the Court at York; but the Lord Chief Justice of the King's Bench had no control over his brother Justice of the Common Pleas, and although the attacks of the common law courts on the Council in the North were less noticeable after Coke's dismissal, and perhaps less direct, they were not less persistent. Twelve years later, Wentworth at his first appearance as Lord President of the Council made significant reference to 'the bleeding evil' of prohibitions which, unless it were stanched by a ready, a skilful hand, would quickly

[66] Harl. 6996. No. 55.

[67] Kerly, p. 111 ff; Gardiner, *Hist. Eng.* 1603-1641, iii. pp. 1-27, 77.

let out the vitals of that Court. His declared policy of assuming no power but what was secured to the Council by its Instructions, of refusing to forbear for any prohibition until the suitor had had satisfactions, and of appealing to the King as the sole arbiter between his Courts in any dispute over jurisdiction,[68] was a challenge that the Common Lawyers were only too ready to take up, and although it was endorsed by the King in the Instructions given to Wentworth in June 1629,[69] it was only fairly successful. To the end, there were always some defendants who refused to admit defeat, and some lawyers who were willing to risk rousing the Lord President's wrath by seeking prohibitions to the Court at York.[70] They had to suffer for their temerity, of course, but they had their revenge a few years later when they spurred on the Commons to impeach Wentworth for obtaining and executing an illegal Commission and Instructions.

[68] Speech as Lord President of the Council in the North, 30 Dec. 1628; see p. 409.

[69] Pat. 5 Car. I. p. 17. m. 8; S. P. Dom. Ch. I. cxlv. No. 23, 22 June 1629.

[70] P. 411, 426.

PART IV.

THE DECLINE AND FALL OF THE COUNCIL IN THE NORTH.

CHAPTER I.

The Decline of the Council in the North.

The unpopularity of the Council in the North under the Stuarts to which the long struggle between the Court at York and the Courts at Westminster bears witness, was only partly due to the causes which have already been indicated as at work under Elizabeth.[1] These, it is true, lost nothing of their strength as time went on; rather, they were reinforced by the political and religious nonconformity to which industrialism gave birth in the North as elsewhere. Puritanism and Parliamentarianism, however, were not at the beginning of James I's reign the forces that they became a few years later. James's rule, too, though it might be inefficient, was not oppressive; and in his time the Council's magisterial authority was used only to maintain order and enforce the laws. In local government especially, James was content to follow a policy of *laissez-faire*, and allowed the Council's coercive power over local authorities to fall into abeyance.[2] Not oppressive as a penal court, even Coke admitted that as a civil court the Council in the North was so useful that its authority ought to be confirmed by statute.[3] The growth of industrial and commercial life in the North through the establishment of the cloth-trade and the development of mining had in fact so greatly increased the business before the Court at York that it might have before it 450 suits at one sitting where Chancery had but 72.[4] Most of these suits were

[1] P. 214-24.

[2] Leonard, *English Poor Relief*, p. 150.

[3] *Fourth Institute.*

[4] Coke, *Rep.* xii. p. 50, The Case of the Lord Presidents of Wales and the North.

actions for debt, arrears of rent, breach of contract, and so forth, generally for sums so small that it was not worth while to bring them before one of the Courts at Westminster; and experience was to show that the Court at York was absolutely necessary to the northern traders and landowners. Therefore, it is not at first sight easy to explain why, before the end of James's reign, the gentry of the whole county, and not of the clothing district only, would have been glad to see the Court not merely regulated, but dissolved.[5] The explanation seems to lie, partly in the inadequacy of Lord Sheffield to his office as Lord President of the North, his lack of ability combining with his lack of principle to bring into contempt and disfavour, not only himself, but also the Council over which he presided; and partly in the economic policy of the government in granting numerous patents of monopoly several of which were specially injurious to northern interests,[6] which the Council nevertheless had to protect.

Edmond, Lord Sheffield, who in July 1603 became Lord President of the Council in the North, had been Leicester's ward during a few months in 1573 until his mother, Douglas, Lady Sheffield, allowed the Earl to deny his marriage with her and seek the hand of the widowed Countess of Essex. On reaching manhood he served with some distinction in the Netherlands campaign of 1585-7 and in the fight against the Armada, and was rewarded in 1591 with a grant of the lordship and castle of Mulgrave, once Sir Francis Bigod's.[7] When the Earl of Huntingdon died in 1595, Sheffield asked for his place as Lord President,[8] but it was refused on the ground that his wife was a recusant, so he had to be content with the governorship of

[5] *Temple Newsome MSS, Various Collections*, viii. p. 22.

[6] The alum (1607), the cloth-finishing (1615), the wool-staple (1614), and the soap-making (1631) monopolies; see Price, *The English Patents of Monopoly*, passim.

[7] *Dict. Nat. Biog.* lii. p. 11.

[8] *Cal. S. P. Dom. 1581-90*, p. 145; *ib. 1595-7*, p. 140; *ib. 1580-1625*, p. 365.

Brill.[9] On James's accession, however, he attained his ambition,[10] partly because it was hoped that his Romanist connections and his milder rule would reconcile the Catholics to the breaking of the king's promise of legal toleration ;[11] partly to free James from his importunate demands for a reward for services of which the king truly said he never heard until informed of them by Lord Sheffield himself.[12]

A hopelessly tactless person of mediocre ability, with an overweening sense of his own importance,[13] and heavily in debt,[14] Sheffield had not been long in office before he quarrelled with all whose goodwill he should have sought. At the very beginning of his Presidency,[15] he offended the Yorkshire Justices of Peace by taking into his own custody and storing in the Manor House at York all the gunpowder and match bought in 1599, and this without consulting the Justices. Then he compounded with the purveyor for wax for three years, without consulting the Justices, although, if he had done so, he would have learnt that by custom the county was exempt. Again, the Justices having agreed in 1599 to pay Sir Edward Yorke 100 marks a year as Muster-master, Sheffield, on making one Mr. Wood his Muster-master, gave him Sir Edward's pay without the county's consent, and ordered the Justices

[9] 13 Jan. 1599 ; *Dict. Nat. Biog.* lii. p. 11.

[10] 22 July 1603 ; S. P. Dom. Jas. I. ii. No. 74.

[11] Sheffield, writing to Cecil, 27 March 1604, says, 'At my departure (the king) commanded me if there were any execution to be made upon priests or others for religion I should stay them till his pleasure were known. . . . If the king incline to mercy, I shall not mislike it, knowing that mercy joined with justice works the best effects' (Hatfield MSS. clxxxviii. No. 98).

[12] James I to Cecil, 1604 ; ib. cxxxiv. No. 56. Letters to Cecil from Ferne (9 June 1603) and Burghley (13 June 1603) show clearly that the appointment was made at Sheffield's own request (ib. c. Nos. 88, 94).

[13] What could be more tactless or arrogant than his quarrel with the mayor of York ?

[14] He told the king in 1604 that he owed £10,000 (ib. cxxxiv. No. 56).

[15] S. P. Dom. Jas. I. i. No. 97, being a Complaint made by the Yorkshire Justices against the Lord President in 1609.

to levy a county rate for the purpose. Then in September 1609 he directed the Justices to hold a view of arms of 12,000 footmen, and ordered that all calivers and corselets other than those of a pattern prescribed by him should be discarded, and new ones bought from his Assistant Muster-master, an armourer, to the great cost of the county and the loss of the Yorkshire armourers. Lastly, he compounded with one Thomas Abrahall to refine the powder remaining at the Manor House, without acquainting the Justices therewith until he wrote asking them to levy £161.10.1½ to defray the cost. The upshot of it all was that in 1609 the Justices laid before the Privy Council a complaint against the Lord President's high-handed proceedings, but apparently without obtaining redress.

This year also saw the beginning of a dispute as to precedence between the lawyers and the knights in the Council, which did not raise its prestige. By the Instructions of 1603 the fee'd Councillors were to take precedence of the knights at the general sessions.[16] No objection seems to have been raised at the time, probably because the legal members were also knights; but when untitled men were admitted to the places of deceased knights, the others, to the number of twenty, protested against the place assigned to them. Lord Sheffield pointed out that it would be a disgrace to the learned Councillors, who were defending the jurisdiction of the Court against the Westminster lawyers, if their place in the Council were changed, and after long debate the Lords of the Council decided in 1609 that no change should be made. The knights, however, refused to accept defeat and brought the question once more before the Privy Council, and at last the order was rescinded. As it was well known that the Lord President had supported the claim of the legal members to special consideration as those upon whom the 'swaighl' of the service lay, he was anxious to be allowed to save his face by giving the Council's new order as if the matter had been

[16] Ib. ii. No. 74. Art. 7.

referred to his decision. The request was peremptorily refused, and Sheffield had to accept with the best grace he might the position thus created for him. As a matter of fact his contention was both reasonable and just, having regard to the ever increasing importance of the Council's judicial work, and the legal members seem to have been restored almost at once to the place they claimed, opposition being once more silenced by knighting such of them as were not already of that rank.[17]

The dispute had not been settled long when it was renewed through the creation of the Order of Baronets in 1611. Two of the Yorkshire baronets, Sir Henry Bellasis and Sir Henry Savile, were members of the Council in the North,[18] and as soon as it had been decided that baronets should have precedence next after barons' youngest sons;[19] they claimed this place at the Council-board, even when it was sitting for judicial business. The King was now of opinion that 'the lawyers were of such necessity for their advice in law to sit near the President as at the sittings of the Council for matters of judicature only, these fee'd Councillors should have place before the baronets'. Still, there were only two baronets of the Council, and it was apparently in the hope of a friendly settlement that the Lord President of the North and the Justices of Assize were required to examine at the Lammas Assize in 1614 'what place his Majesty's Councillors and Secretary of that Presidency anciently held, and to restore them to their right'. Their Lordships, however, would not determine anything, holding by the King's opinion that whatever the position might have been in the past, present needs required that the lawyers should sit near the President. Still the baronets would not yield; and they approached Sheffield directly, pointing out that they did not have their place gratis,

[17] Ib. xlviii. No. 117; xlix. Nos. 8, 29, 47; l. Nos. 15, 55; cxli. No. 5.

[18] G. E. C., '*The Complete Baronetage*'; Pat. 7 Jac. I. p. 2.

[19] 6 Ap. 1612; *Hist. MSS. Comm. Rep.* x. App. Pt. iv. *Westmorland MSS.* p. 8.

'but did contract for a settled right upon such an overvalued consideration of service as was never given by subjects to any prince of this kingdom, or any other, for the like', and urging that as there were but two of them they could not much depress the fee'd Councillors in the sittings, closing with a prayer 'rather to be put from the Council than to serve the king to his prejudice and their own dishonours'.[20] It could not be denied that the baronets had a real grievance; but there was, of course, no certainty that there would never be more than two baronets in the Council in the North, and there could be no doubt that in the interests of justice the legal members should sit near the Lord President. At last a compromise was reached, and when the Instructions were renewed in 1616 on the appointment of Sir Thomas Tildesley and Sir Thomas Ellis as Judges of the Court, the learned Councillors were given place next to barons and barons' sons, the Justices of both Benches at Westminster, and the Barons of the Exchequer, at the sittings in execution of the commissions of oyer and terminer and the peace, and at church, and at such like public meetings, but — it was understood — at no others.[21]

These disputes may seem to us much ado about nothing, and even more than little childish; but on their determination hung no less an issue than the character of the northern court and its relation to the central government. If the knights, or even the baronets, had gained their point, the Council would probably have become simply a glorified Court of Quarter Sessions administering civil as well as criminal justice, and the legal members would have been little more than Justices' clerks. The Court, being more under local control, would doubtless have been more popular with the local gentry than it was, but it would

[20] *Wombwell MSS.* ii. p. 113; S. P. Dom. Jas. I. lxxvii. 24 July 1614, a letter to the Lord President of the North and the Justices of Assize.

[21] Pat. 14 Jac. I. p. 22d. The limitation was inserted in the Instructions in 1629; Pat. 5 Car. I. p. 3. m. l.

probably have been much less efficient as a civil court, and it would certainly have ceased to exercise any control over the Justices of Peace. As it was, the legal Councillors became beyond cavil the judges of the court, and the Council regained its former authority as a court of law and equity.

As it was just about this time that the quarrel between the Council and the Courts at Westminster came to a head, Sheffield's position was clearly very far from enviable. He had not even the sympathy of his colleagues, for they were nearly all Burghley's friends. So he might well write as he did in July 1609 to Salisbury: 'I am here in that house they call Little Ease, for I think no place affords less, which makes me many times think of your Lordship's great pains in 'menaying' the whole, when one part is so troublesome to me, and many times I pray God to assist you with health and contentment of mind to go through with it; but a great advantage you have of me by the comfortable society of your noble friends and allies of which I am deprived, which makes my burden much more heavy, but I hope it will please God to afford me that happiness in his good time.'[22]

To some extent Sheffield had the remedy in his own hands, for under the Stuarts the Lord President was allowed to fill vacancies in the Council as he pleased.[23] It had not always been so; for although the Presidents had long been allowed to recommend new members for vacant places, their advice had not always been taken. But the favour granted to Lord Burghley in 1603 when he was allowed to fill up the Council with his own friends was treated as a precedent for allowing his successors to fill vacancies as of right. Unfortunately, the use Sheffield made of his opportunities was neither to his own credit nor to the Council's. Perhaps it cannot fairly be made a reproach to him that whereas the Crown had as a rule chosen the legal

[22] S. P. Dom. Jas. I. xlvii. No. 47.

[23] Ib. cl. No. 28

members of the Council among the most distinguished lawyers of northern family practising in the Courts at Westminster, Sheffield and his successors chose them among the lawyers practising in the northern shires.[24] We have only Coke's word for it that they were less able than their predecessors, and they must have had an invaluable knowledge of local custom. Still, the effect of the change must have been to raise a barrier between the members of what may be called the Northern Bar and those of the Southern one, which could not fail to injure the Council in the North.

There cannot, however, be two opinions of Sheffield's conduct in allowing his choice of Councillors to be determined by his private interest. Bribery and sycophancy were no less rife in public life under the Tudors than under the Stuarts, but they wrought less evil then because the dangers of the times compelled those who had office in their gift to give some heed to the fitness of their protegés. Even when these dangers had passed away, the worst evils were kept in partial restraint so long as Robert Cecil, now Earl of Salisbury, remained at the head of affairs ; but after his death in 1612 the Elizabethan tradition of service died out of public life, and men won their way to office through purchase and intrigue rather than through merit. Now, the very increase of business that excited the jealousy of the Westminster lawyers against the Council in the North made it particularly attractive to place-hunters. Even in Elizabeth's time the Secretary, whose salary had been fixed at £33.6s.8d., took over £800 a year in fees,[26] and the Attorney's office was so profitable that only ten years after it was created Sir Anthony Thorold refused to surrender it for a place in the

[24] It is significant that whereas under the Tudors the Common Lawyers in the Council were almost always King's Counsel, if not Serjeants-at-law, not one of these appointed under the Stuarts was made even King's Counsel (Foss, v, vi, passim).

[26] Lans. 79 f. 192.

Council itself.[27] The incomes of the legal members too were far above the £100 a year at which their fees had been fixed in 1582;[28] for by custom the learned Councillors claimed a fee for signing bills, orders, etc.[29] So it is not astonishing that even in Elizabeth's time there had grown up a practice of making life-grants of places in the Council in the North to men who drew the profits, leaving deputies to do the work.[30] It was only natural, therefore, that when the patronage belonging to the Council passed into the hands of the Lord President, especially of one so impecunious as Sheffield, places and the reversionary rights to them should be so freely bought and sold,[31] that at last a tariff was fixed by which £600 was the regular price of a learned Councillor's place.[32]

[27] 23 May 1566; S. P. Dom. Add. Eliz. xiii. No. 15.

[28] Ib. xxvii. No. 128, Art. 12.

[29] Pat. 7 Jac. I. p. 2. m. 27d; Instr. to Sheffield, 21 July 1609, Art. 2.

[30] E.g. Robert Beale, Clerk to the Privy Council, who had married Walsingham's sister-in-law, was made Secretary to the Council in the North in succession to Henry Cheeke in October 1586; but he could not serve in person, and Ralph Rokeby the younger acted as his deputy till Aug. 1589, when he was made Joint Secretary, taking half the profits. When Beale died, Sir John Herbert, Secretary of State, received the office, John Ferne remaining deputy (p. 255).

[31] Thus in 1604 the reversion of Herbert's Secretaryship was granted with survivorship to Sir Thomas Smith and Sir Thomas Edmonds (S. P. Dom. Jas. I. v. No. 76); but in June 1604 the office was granted to Sir John Ferne and Sir William Gee (ib. vi. No. 64). Then on 20 Aug. 1609 a grant of the office was made to Sir Robert Carr in reversion after Gee, with contingent reversion to Sir John and Thomas Trevor, and confirmed 28 Sept. 1609 (ib. xlvii. f. 66). So, too, 26 March 1612, Ferne's Secretaryship was granted to Sir Arthur Ingram for life, with reversion to Dr. William Ingram, Christopher Brooke, Richard Martin and Richard Goldthorpe (ib. lxviii).

Other offices connected with the Council were granted in the same way. 11 May 1609, George Wetherhead was granted the office of Examiner of Witnesses before the Council in the North in reversion after William Nevill or John Mole (ib. xliv); then on 20 July 1616 the reversion was granted to Henry Mole on surrender of the patent to Wetherhead (Sign Manuals, vi. No. 65).

[32] In 1627-8 Scrope wrote to Buckingham about filling up the place of Christopher Brooke, one of the learned Councillors, who had died recently

More scandalous than these open sales, and more harmful to the Council in the North, were the secret intrigues which made Sir John Bourchier and Sir Arthur Ingram members of the Council in 1611 and 1612 respectively. Bourchier and Ingram were influential members of a group of London merchants, financiers we should call them, to which belonged Sir Lionel Cranfield, afterwards Earl of Middlesex, Sir Walter Cope, and other conspicuous figures in the commercial history of the reigns of James I and Charles I.[33] This group of financiers, whose influence on the political history of their time has not yet received the attention it deserves, attached itself first to the Earl of Salisbury and afterwards to the Duke of Buckingham, and was rewarded with a share in the most profitable of the many monopolies granted between 1599 and 1639. It was therefore quite in accordance with the practice of the day that when alum deposits of some value were found on Lord Sheffield's land at Mulgrave in 1604,[34] Sir John Bourchier should be associated with Sheffield and his friends Sir Thomas Challoner and Sir David Foulis in a patent of monopoly which Sheffield's interest with Salisbury obtained in 1607. Development proved more costly than had been anticipated, and the patentees were forced to pray the King to take the works into his own hands. This was done in 1609 on the advice

saying that the applicant offered £350 for it, where £600 was ever given for it; but he would take nothing for it, out of gratitude for the favours he had received from the Duke (S. P. Dom. Chas, I. lxxxix. No. 66). The phrasing of this letter creates an impression that Scrope found the price fixed when he came into office, an impression which is strengthened by his known efforts to put down extortion (p. 391 f.) and by Sheffield's equally well-known lack of scruples.

[33] *Temple Newsome MSS.* pp. 3-5. In 1607 Cranfield wrote to Ingram: 'There shall no reckoning ever breed any discontent between you and me again, if God preserve me in my right will. One rule I desire may be observed between you and me, which is that neither of us seek to advance our estates by the other's loss, but that we may join together faithfully to raise our fortunes by such casualties as this striving age shall afford'.

[34] W. Hyde Price, *op. cit.* ch. 7. The account of the Alum Monopoly given here is chiefly derived from Dr. Price's work.

of Sir Arthur Ingram, the interests of Sheffield and the other patentees being bought out by annuities amounting to £6000. The works were then farmed to Sir John Bourchier and another, again by Ingram's advice; but before the end of the year they were begging to be relieved of the whole business, objecting chiefly to the burden of £6000 a year to 'the patentees that never paid out a penny'. Salisbury would not let them off their bargain; but shortly afterwards, Bourchier was admitted to the Council in the North (8 June 1611) at Sheffield's request,[35] and was allowed to raise more capital by bringing new men into the Alum Company. Still failure dogged the enterprise, and in March 1612 the farmers were forced to ask relief from the Privy Council. Sheffield's annuities were in danger, and it was probably to obtain Ingram's good will that he was appointed Secretary and Keeper of the Signet in the North on 26 March 1612, with reversion to his brother, Dr. William Ingram, one of the Masters in Chancery.[36] Nearly a year elapsed, however, before Ingram was admitted to the Council in the North; for he had apparently made up his mind to get the Alum Works into his own hands, so the relief sought was refused and the company declared itself bankrupt just

[35] S. P. Dom. Jas. I. lxiv. Bourchier's pedigree is interesting. His father, William Bourchier, who died mad, was the eldest son and heir of Sir Ralph Bourchier of Benningborough Manor in the Forest of Galtres. His mother, Katherine Barrington, was the daughter of Sir Thomas Barrington, hereditary Woodward of Hatfield Forest and Lord of Hatfield Regis and other lands in Essex, and Winifred, younger daughter and co-heiress of Henry, Lord Montague, eldest son of Margaret, Countess of Salisbury, and Sir Richard Pole. Sir John's uncle, Sir Francis Barrington, married Joan, eldest daughter of Sir Henry Cromwell of Hinchinbrook, grandfather of the Protector. Sir John Bourchier was therefore the kinsman by marriage of John Hampden and Oliver Cromwell, who, like himself, were cousins of Sir Thomas Barrington (*Trans. Essex Archae. Soc.* (N. S.) ii. pt. 1. 'History of the Barrington Family', ed. G. A. Lowndes, 1879). Bourchier's connection with Cromwell no less than his own grievances against Charles I made him one of the regicides.

[36] S. P. Dom. Jas. I. lxvi. No. 79; ib. cxli. f. 94.

before Salisbury's death. Then Ingram persuaded the Treasury Commissioners (Feb. 1613) to accept a scheme whereby the Crown was to buy out the Alum Company and clear off its debts preliminary to his own appointment as manager in April 1613. Sheffield's annuities were now safe so Ingram was at last admitted to the Council (2 March 1613), his brother being at the same time admitted to the Civilian's place left vacant by the death of Sir John Gibson's death.[37]

In any circumstances it would have been undesirable that there should be so close a connection between the Council in the North and any northern commercial undertaking as had thus been established between it and the Alum Works; but as it happened, the Alum Monopoly was peculiarly obnoxious to all connected with the woollen industry because, thanks to the gross mismanagement of the Works, the meagre and irregular output was never adequate to the needs of the clothiers. From the first they had been driven to obtain relief by wholesale smuggling; and under Ingram's management things went from bad to worse, the output becoming smaller while the quality deteriorated and the price rose. As the clothiers were already the bitterest opponents of the Council in the North, it was singularly unfortunate that the Lord President himself should be the owner of the alum mines, and that at his instance the financier who had persuaded the Crown to take over the monopoly and make him manager of the Works, should have been made Secretary of the Council.

Worse was to follow. Under Ingram's management the works continued to be run at a loss, until in 1615 the Lord Treasurer Suffolk in despair determined to farm them once more, and accepted Ingram's bid for a twenty-one years' lease on terms which left the king responsible for the annuities to the patentees. This offer to lease a business which he had been running at a loss as manager for the Crown, could not fail to rouse suspicion of fraud; and in March

[37] *Temple Newsome MSS.* p. 8; Pat. 14 Jac. I. p. 22d.

1616 a commission of inquiry was instituted, which, before it closed in May 1619, made it clear that the Alum undertaking, in which Ingram had secured the only profits that were being made, was just an early example of fraudulent company-promoting designed to enrich the patentees and the farmers at the expense of the Crown, the investors, the employees, and the public.[38] The alum deposits did indeed exist, but the management was so corrupt that the works were deliberately starved, and the inquiry could discover no return for all the outlay but a few inadequate buildings, sadly decayed, and a body of starving and desperate workmen whose wages were ever in arrears.[39] So close, however, was the connection between finance and politics that in spite of the damaging evidence elicited by the commissioners, no one connected with the alum works was punished. The real purpose of the inquiry had been to obtain evidence for a charge of fraud and corruption in connection with the works which was brought against Suffolk shortly after the inquiry closed;[40] and after the Howards had been driven from Court, Buckingham had no interest in the alum frauds. So at this time, thanks to Cranfield's influence, Ingram was neither dismissed from the Secretaryship nor even forced to retire from the alum business.

Scandalous as was the continued association of the men mostly deeply involved in the alum frauds with the government of the North, the discredit it brought on the Council did less harm to the Court at York than the raising of its fees in consequence of another monopoly granted in 1606. Almost from the first erection of the Court the Secretary to the Council had been assisted by clerks whose number had risen from two in 1549 to fourteen in 1603. Appointed by the Secretary subject to the approval of the Lord President, they were allowed to take the fees for king's letters

[38] Price. *op. cit.* pp. 85, 101.

[39] *Temple Newsome MSS.* p. 15.

[40] Gardiner, iii. p. 208 ff.

ordinary and *supervisum* and for bills, these being fixed in 1603 at 22d. for the first and third, and 2s. 2d. for the second. They are also allowed to act as Attorneys their fee being 2s. for a sitting or term in each case.[41] As the fees for letters and bills, amounting to nearly £700 in 1606, made the best part of their living, the clerks were very hard hit by a patent for making and exhibiting all letters and process called the king's letters, with bills and declarations upon them, in the Court at York, which was granted in September 1606 to John Lepton, a Gentleman of the King's Chamber who had earned James's gratitude by the zeal with which he had pursued the Gunpowder Conspirators,[42] and had also distinguished himself by winning a wager to ride for six days between London and York, the single journey being accomplished each day before dark.[43] The Secretaries, Sir John Ferne and Sir William Gee, to whose office the making of all such bills, etc. belonged, refused to admit Lepton, and a struggle began between them and the king and his patentee. The President and the Secretaries urged that the grant involved dishonour to the Court, prejudice to the Secretaries, loss to the Attorneys, and impositions to the people who must pay higher fees to the Attorneys to recoup them for their loss of income.[44] After long examination it was found that the patent was admissible only after the deaths of the then Secretaries, so Lepton compounded with them for the execution of part of the office, and at the request of the Attorneys allowed them to act as his deputies. The Secretaries were still to receive 6d. for sealing every document, and were given authority to punish and dismiss any of Lepton's clerks who abused or neglected his office.[45] When Ingram became Secretary, Lepton's patent obtained its full force;

[41] Instr. 1550, Art. 23; Harl. 6808 f. 52.
[42] S. P. Dom. Jas. I. xxxviii. No. 71.
[43] Drake, p. 377.
[44] Hatfield MSS. cxxii. Nos. 51, 56.
[45] S. P. Dom. Jas. I. xxxvi. No. 39; ib. cxxviii. No. 7.

and to make good his loss Ingram took to his own use all the fees limited by the Instructions, leaving his clerks to exact what they could from the suitors.[46] He even tried to appropriate the fee which was by custom given to the learned Councillor who signed any bill or order, though this was contrary to the Instructions of 1609 (Art. 2) which forbade the Secretary and his deputy to sign any bills or other writings which should be signed by the learned Councillors or to take any part of the profit. No such protection was given to the Attorneys, who were therefore forced in 1615 to pray Lepton to raise their allowance by £100 a year.[47] At the same time, their hard case being made known to the Lord President and Council, their fees were raised to 2s. 6d. for every case and 2s. 2d. for every letter and bill, and they were also allowed 2d on every warrant.[48] The arrangement was thoroughly unsatisfactory; for the people were practically being taxed for Lepton's benefit, and the administration of justice suffered intolerable delay, since no king's letter or process could be sealed until the patentee's stamp was set thereon, and the deputy whose duty this was, was often away. The raising of the fees was naturally regarded as a grievance, and Sheffield's successor found that the abolition of the new exactions was the surest means to gain popular favour.[49]

It is not difficult to see how the dispute between the learned Councillors and the Council at large, the traffic in places in the Council, the connection of the President and the Secretary with the Alum scandal, and the raising of the fees, besides hampering the Court at York in its struggle its struggle with the Courts at Westminster, must have weakened the Council's executive authority. The English system of local government, based as it is on the principle that 'public administration of local affairs can

[46] *Temple Newsome MSS.* p. 21-2.
[47] S. P. Dom. Jas. I. clxxiv. No. 10.
[48] Harl. 6808 f. 52.
[49] Ib.; *Temple Newsome MSS.* p. 22.

only be carried on by local authorities',[50] has the serious drawback of leaving the central authority powerless to enforce even the most salutary law unless it can find some means of controlling, and if necessary of coercing, the local authorities. Under the Tudors the necessary control and coercion had been exercised through the Council of State and the Councils in the North and in the Marches of Wales. Sir Robert Cecil, however, finding it necessary to conciliate the Justices of Peace, especially North of the Trent, had transferred to them most of the administrative duties hitherto entrusted to the Councils. The decay of the coercive jurisdiction of the Council in the North over the Justices of Peace was therefore a serious matter. The forces that produced the industrial revolution were already at work, destroying what was left of the old corporate organisation of economic and social life, and Elizabeth's later Parliaments had had to give much time to social legislation. It was, however, much easier to pass good laws than to enforce them; for the demand for liberty characteristic of the Stuart age had its darker side in carelessness of the public good when it clashed with private interest. So, when the Tudor machinery for securing efficiency and diligence in local government became corrupt and ceased to work, the laws for the relief of the poor, for the regulation of the cloth-trade, and so forth, were no longer enforced.[51]

The turbulence, too, against which the Council in the North had fought so long and so well, began to raise its head again. It was not only on the Borders that the old evils reappeared.[52] In Yorkshire too there were signs that the old abuses were creeping into administration of justice, especially in the West Riding, where the *custos rotulorum*, Sir John Savile, was obliged to resign his office to save himself from dismissal at Sheffield's instance for

[50] Redlich and Hirst, *English Local Government*, i. p. xxv.

[51] Leonard, *loc. cit.*

[52] S. P. Dom. Jas. I. lxxxviii. No. 44; ib. xcv. No. 19; ib. ciii. No. 68; ib. cix. nos. 6, 15.

using his position to satisfy his own ends.[53] As Savile, was leading the opposition to the Council in the North Sheffield's disinterestedness in making the charge might be suspected were it not that Buckingham, who in 1617 sought to have Savile reinstated, had to admit that he had been misled.[54] Moreover, we have independent evidence of the indifference of the West Riding Justices to the claims of justice and public duty in Nicholas Assheton's story of how two of them would have allowed Sir Thomas Metcalfe of Nappay to take forcible possession of Raydall House in June 1617 during the owner's absence, had not his wife, who was a woman of spirit, fetched the Serjeant of the Mace and the Pursuivant from York.[55]

All things considered, we should wonder why Sheffield was allowed to remain President of the Council in the North for nearly sixteen years, if we did not know how deeply the canker of corruption had eaten into English public life. As a matter of fact, he owed his removal from the Presidency he had so much discredited, not to his own shortcomings, but to the shifts and changes of the foreign policy of the Court. Appointed at first to initiate a milder policy towards the recusants than had been followed during Elizabeth's last years, he had nevertheless readily lent himself to a policy of severe repression whenever those who wished to wage war against Spain happened to have the king's ear. Especially during the years 1615 to 1617, when Buckingham was still allied with the war party that had helped him to gain the king's favour, the Lord President and Council in the North were so active in enforcing the laws against priests and recusants that the Catholics ascribed to retributive justice the misfortunes of Sheffield, who had lost all his six sons.[56] Ten years' quiet, however,

[53] P. 396.

[54] *Strafford Letters*, i. p. 4.

[55] '*Journall of Nicholas Assheton of Downham*' (Chetham Soc.).

[56] See especially S. P. Dom. Jas. I. lxxx-xcii, passim. From *The Duke of Buccleugh's MSS at Montague House*, i. p. 175, it appears that the men

had so far affected public opinion that imprisonment and heavy fines were the only penalties that the Catholics had to fear, and the only person who lost his life was a priest whom Sheffield sent to execution in 1616 when the agitation was it its height.[57] At the moment no notice was taken of the fact that he had done so without consulting the king; but a little later Buckingham veered round to a Spanish policy, and Gondomar, the ambassador of Spain and the champion of English recusants, demanded in July 1618 that Sheffield should be deprived of his office. James readily assented,[58] and in January 1619 Sheffield reluctantly surrendered the Presidency of the Council in the North to Lord Scrope for the sum of £5000.[59]

There can be little doubt that it was at Gondomar's instance that Scrope was chosen to succeed Sheffield. A notorious gamester, whose high play was the talk of court and country,[60] he was obviously unsuitable for his new office; but as a suspected recusant his rule was certain to be marked by great leniency towards recusants. This promise was fulfilled, and during his Presidency several leading recusants were even admitted to the Council itself.[61]

against whom the Council in the North was particularly active in 1615—7, Sir Roger Widdrington and his friends, had already been before the Court at York in 1605-6 in connection with the Gunpowder Plot.

[57] Challoner, *Missionary Priests*, ii. p.p. 63-5.

[58] Gardiner, *op. cit.* iii. p. 137.

[59] Rushworth, i. p. 393; cf. S. P. Dom. Jas. I. cv. No. 104; Harl. 1877 f. 77.

[60] Chamberlain, writing to Dudley Carleton, 23 Aug. 1619, reports the high play of Scrope with young Foster (S. P. Dom. Jas. I. cx. No. 26, and on 7 March 1620, Articles were exhibited before the Ecclesiastical Commissioners for York, against William Clough, Vicar of Barmham, that he had said that the King was a fool and fit for nothing but catching dotterels; the Lord President was a fool, only fit for gaming; the North was governed by an old doting Bishop (i. e. Toby Matthew, Archbishop of York) (ib. cxiii. No. 13; ib. cxvii. No. 48).

[61] E. g. Lord Eure (S. P. Dom. Chas. I. xi. No. 57) and Sir George Calvert, Lord Baltimore. Cf. *House of Lords MSS.* ii. March 1626, Petition of the House of Commons for Scrope's removal from office.

Naturally, his appointment was very unpopular with the northern Protestants. Sir Thomas Hoby, although a member of the Council in the North, so far forgot himself as to behave unbecomingly towards the Lord President; and the aged Archbishop of York, Tobyas Matthew, insisted on taking precedence of him, and even built his pew in the Cathedral in front of the President's.[62] It is possible that the Yorkshire Puritans would not have followed this insolent course but for the prospect of a war with Spain in defence of the king's son-in-law, the Elector Palatine, who in August 1619 accepted the Bohemian Crown. The whole Court, with the one great exception of James himself, was eager for war, and Buckingham, carried away by popular feeling, was urging the King to defend the Palatinate at all costs.[63] But when Gondomar returned from Spain in March 1620, he had no difficulty in pursuading James to refrain from aiding or even defending his son-in-law. The King undertook to issue commissions for compounding with recusants and for the leasing of their lands, which would save the Catholics from the exactions of the Exchequer pursuivants;[64] and Scrope's opponents were sharply admonished to treat him with the respect due to his Majesty's minister.[65]

A few months later, however, Scrope was again in danger; for when parliament met in January 1621 the Commons made it their first business to deal with the Catholics, and presented a petition for the execution of the penal laws against recusants. Almost at once, however, attention was diverted to monopolies and abuses in the Courts of Justice, and it was not till after the introduction of a Monopoly Bill and the impeachment of Lord Chancellor Bacon for corruption[67] that the Commons returned to the charge.

[62] S. P. Dom. Jas. I. cxvi. 24. July 1620, two letters from the King.

[63] Gardiner, *op. cit.* iii. p. 326; *Dict. Nat. Biog.* lviii. p. 329.

[64] Gardiner, *op. cit.* iii. p. 335-51.

[65] S. P. Dom. Jas. I. cxvi. 20 July 1620; the King to Naunton and to the Archbishop of York.

[66] 10 Feb. 162-01, Gardiner, *op. cit.* iv. p. 30.

[67] *Ib* iv. pp. 41 ff, 56 ff.

Their temper was shown by the savage sentence they would fain have passed on a poor old Catholic barrister for rejoicing at the downfall of the Elector Palatine, and James prevented renewed legislation against recusants only by ordering Parliament to adjourn. The Commons, however, were not to be baulked, and when they met again in November, they gladly followed Pym's lead in again petitioning for the suppression of recusancy by a special commission. It was impossible to separate discussion of the policy to be followed with respect to Catholics at home from discussion of the King's foreign policy, which turned on the marriage of his son with a Catholic princess of Spain. At Gondomar's instance James forbade the Commons to debate foreign affairs, and when they urged their privilege of free speech, he dissolved Parliament in January 1622. So Scrope was saved from dismissal; for it is not possible that, if the Commons had had their way, he should have remained Lord President.

Of more moment to the Council in the North were the attacks of the Commons on monopolies and abuses in the Courts of Justice; for none could deny that Lepton's patent for making king's letters and the bills of declarations thereon was a monopoly, nor yet that it had led to grave abuses in the raising of fees and the hindrance and delay of justice. The sharp dealing of the Commons with abuses in the administration of justice at once called forth a complaint of the fees taken in the Court at York in excess of those limited by the Instructions.[68] So in May 1621 the King wrote to the Lord President to abate the fees complained of in his jurisdiction,[69] and a month later Lepton's patent was referred by the Privy Council to a special commission for consideration as a general grievance,[70] the complaint having set forth that the patent, besides being prejudicial

[68] Harl. 6808 f. 52, 'A Complaint sent in to Chancery', apparently belongs to this time.

[69] *Temple Newsome MSS.* p. 20.

[70] 18 June 1621; S. P. Dom. Jas. I. cxxi. No. 110.

to suitors and a hindrance to justice, was the sole reason why the fees were increased. What the report, if any, of the commissioners was, does not appear;[71] but the revival of the old dispute between Lepton and the Attorneys for whose benefit the fees had been raised, inspired Scrope to seek popularity by taking up the cause of reform. Having induced the King to refer the case of Lepton's patent to the decision of the Privy Council,[72] he went on to question all fees taken by the Clerks in excess of those contained in the Instructions. As the Secretary, Sir Arthur Ingram, took to his own use all the fees set out in the Instructions, Scrope regarded all the Clerks' fees as exactions, and said that if Ingram would have clerks, he must pay them out of his own and not maintain them at the country's charge. Ignoring Ingram's request that the matter should be deferred till he had waited on Scrope either in the country or in London, the President and Council, after much discourse, decided that all fees out of the Instructions and table should be suspended until the Secretary should come and shew sufficient cause to the contrary. His brother and deputy, Dr. Ingram, was, however, given the choice either to deliver to the Council a copy of the Secretary's patent, or the fees to be suspended, or to give bond to answer them if they should be adjudged against him. Naturally, he chose to deliver the patent.[73]

The reform of the Clerks' fees was only part of a scheme of general reform. A few days before determining to suspend

[71] Probably it was adverse. Lepton, to revenge himself on Coke for a decision given by him against a patent held by him, joined with one Goldsmith in laying a complaint against him in the Star Chamber (S. P. Dom. Jas. I. cxxiv. No. 36), and it is not unlikely that this patent was the one Coke decided against.

[72] The King to Calvert, 10 Feb. 1622; *Temple Newsome MSS*, p. 21. It is much to be regretted that the editor of these documents has given the contents of only a very few of the papers relating to the fees at York. With fuller information we might have ascertained what success Scrope had in his campaign against extortion.

[73] *Ib.* pp. 21-2.

the fees, the Council altered the return of letters upon sight, upon debt books and single bills, making them returnable within fifteen days, and other reforms were talked of. For, as one of the victims of this zeal wrote to Ingram, 'the gentry of the country delight much to see this combustion and would be glad all the fees and the court too were dissolved, if it might be. They applaud my Lord for his integrity to his prince and country. He glories greatly in that applause, and hopes to receive great thanks at his Majesty's hands therein. I hear he intends a reformation in the fees of the clerks of the assizes and clerks of the peace and to be a general reformer, thereby to win great honour and fame for his true love and earnest zeal to his country'.[75] Ingram, however, had a powerful friend in Cranfield, now Lord Treasurer. The Lord President and Council were ordered to stay proceedings in the case concerning the fees of the Secretary's place, until he returned to defend his rights. Afterwards he obtained an order in Council that the hearing of the dispute between Lepton and the Attorneys and Clerks of the Council in the North should be postponed to October 20, meanwhile the fees to be paid as formerly; and when the Lord President insisted on dealing with the Clerks' fees at the August sessions, the King wrote to Scrope, requiring him to consult the Justices of Assize, and thereupon either settle the question or certify the true state thereof to himself.[76] Again Ingram seems to have been able to have the proceedings stayed, and the patent was still in force in March 1626 when the office created by it was granted to Sir Thomas Momson.[77] A more 'thorough' reformer than Scrope was needed to deal with Ingram and his kind, and it was not until 1630 that Lepton's patent was declared void by the Judges of the King's Bench on the ground that it was a monopoly by the

[75] *Ib.*

[76] *Ib.* p. 21-3; S. P. Dom. Jas. I. cxxviii, 26 March 1622; ib. cxxxii. No. 18.

[77] Coll. Sign Manual, Car. I. i. No. 143.

common law, [78] and the way was cleared for the thorough reform of abuses in the Council in the North that Scrope had tried but failed to effect.

The abuses that Lord Scrope tried to reform were indeed only a tiny part of an evil that called for reforms far more drastic than any he had ever dreamt of. For nearly quarter of a century the coercive control of the Councils over local authorities had been allowed to decay. Even the Privy Council had seldom interfered with local administration; and at last the machinery by which the Tudors had secured efficiency and diligence in local government had ceased to work. So long as the prosperity that followed the conclusion of the war with Spain in 1604 lasted, the ill-effects of a policy of *laissez-faire* in local government were not seen; but in 1620 prosperity gave place to acute economic depression brought about by the dislocation and consequent decline of the cloth-trade through the Cloth-finishing Monopoly of 1615, by Dutch competition in commerce, by the renewal of war abroad, and by bad harvests and an outbreak of plague at home.[79]

Inasmuch as this new crisis was chiefly due to the decline of the cloth-trade, it was felt most severely by the clothiers of the West Riding. So far back as May 1614 Sir John Savile had told the House of Commons that several thousands of pounds' worth of cloth remained in the manufacturers' hands, there 'were so few buyers'.[80] As things became worse, unemployment became chronic, and it only needed a partial failure of the harvest in 1621 to precipitate a serious crisis accompanied by rioting and disorder.[81] As a temporary measure of relief the Justices

[78] Widdrington, *Analecta Eboracensia*, Egerton MSS, 2578 f. 58; Rolls, *Rep.* S. 214, Tit. Prerogative 1e Roy.

[79] Scott, *Joint-Stock Companies*, i. pp. 166 ff, 465-6.

[80] He also stated that within ten miles of his own house there were 13,000 men engaged in dyeing and pressing cloth (Cartwright, *Chapters in the Hist. of Yorks*, p. 184).

[81] S. P. Dom. Jas. I. cxxx. No. 109. The whole of this volume of State Papers deals with the decay of trade.

of Peace in the northern counties were required to order the clothiers to go on manufacturing so that their men should not be thrown out of employment, and to see that the wool-dealers did not enhance the price of wool.[82] A committee of twelve persons was appointed to confer with the merchants on the decay of trade ; and in September a Royal Commission, which included the Lord President and other members of the Council in the North, was appointed to investigate the remedies required to raise the price of wools, prevent their export, and secure the import of Scottish and Irish wools into England instead of to other countries; also to prevent deceits in the manufacture and dyeing of woollen goods and new draperies, to obviate mischief to trade by the private regulations of the Merchant Adventurers or other companies, to consider the causes of the scarcity of coin, the balance of exports and imports, and which branches of trade for export should be encouraged; also how the navy might be strengthened, the Eastland and East India Companies encouraged, the growth of hemp and flax in England and the general wearing of English cloth promoted, etc.[83]

The recommendations of the Commission seem to have had just as much, and just as little, effect as those of any other Royal Commission. They were not forgotten, and they formed the basis of the economic policy enunciated by Charles I in 1626 ;[84] but they seem to have had little effect at the time, at least in the North. There, the Commission was important chiefly because its inquiries revealed a divergence of interests between the sheep-masters, who wanted to raise the price of wool, and the clothiers, who wanted the price kept down by large imports from abroad, which was destined to have a far-reaching effect on the position of the Council in the North. For hitherto the landowners and the clothiers, having the same interest in the prosperity of the cloth-trade, had been united in their

[82] 9 Feb. 1622 ; ib. cxxvii. No. 76.

[83] 28 Sept. 1622 ; ib. cxxxiii. No. 27.

opposition to the Council, if only as the protector of monopolies most injurious to that trade. Now, however, the clothing districts were placed in sharp opposition to the rest of the country north of the Trent; and in effect, there now began the conscious conflict of landed and manufacturing interests in the North of England, and more particularly in the West Riding of Yorkshire.

County society was not then a close caste. It was still the custom for the younger sons of the gentry to seek their fortunes in commerce, and their elder brothers did not disdain to improve theirs by marrying the well-dowered daughters of merchants and yeomen. Wealthy clothiers, too, were eager buyers of the estates of old but impoverished families, and in the reigns of James I and his son many West Riding manors had passed into the hands of self-made men. So each of the conflicting interests found a representative and leader among the chief families of the West Riding. The Saviles, whose lands were in the heart of the clothing district, and who had long been identified with the interests of Halifax, Leeds, and Wakefield, provided the clothiers with a leader in the person of Sir John Savile, the Knight of Howley; the Wentworths gave the landed gentry a leader in the person of their most distinguished son, Sir Thomas Wentworth of Wentworth Woodhouse. The two families, although of divergent interests, had long been on friendly terms, and Wentworth's sister was actually married to a Savile;[85] but as fortune would have it, shortly before the crisis of 1622 threw into relief the latent antagonism between the sheep-masters and the clothiers, the Knight and Sir Thomas had entered on a life-long quarrel.

Savile, whose influence among the clothiers made him a personage in South-west Yorkshire and had won him admission to the Council in the North in 1603,[86] was

[84] Meredith, *Eng. Econ. Hist.* p. 186.

[85] Cooper, E. *Life of Strafford*, i. p. 6.

[86] S. P Dom. Jas. I. ii. No. 74.

ambitious to play a part on a larger stage, but he had been so unlucky as to quarrel with Salisbury in June 1607 over a Clothiers Bill that he had been chosen by Sheffield to see through the House.[87] Worse was to follow; for after Salisbury's death, he offended the government, partly by his opposition in the Parliament of 1614, partly, it may be, by his support of the Mayor and Corporation of York in their quarrel with the Lord President and Council in the North in that year. Certain it is, that in February 1614, Sheffield laid before the Lord Chancellor a formal complaint that Sir John Savile had abused his position as a Justice of Peace, 'to satisfy his own ends'; and in December 1615 the Knight was obliged to resign his office of *custos rotulorum* of the West Riding - to save himself from dismissal, as we may understand from Ellesmere's comment on the letter of resignation.[88] Allowed to nominate his successor, he chose Sir Thomas Wentworth, who, young as he was, was well qualified for the office. Four years of study in the Inner Temple, fourteen months of foreign travel, years of close attendance on the Court of Star Chamber, qualified him for the multifarious duties, administrative and judicial, of a Justice of Peace.[89] Savile, however, had probably nominated him in the expectation that when he himself had made his peace with the government, Wentworth would resign the office to which he had been so suddenly advanced. It is not surprising that a life-long quarrel resulted from Wentworth's refusal to surrender the office even at Buckingham's request in 1617.[90] The quarrel was carried into the Council in the North when Wentworth was admitted to it in July 1619 at Scrope's instance,[91] and it became irreconcilable when Savile was defeated by his rival in the parliamentary election of 1621.[92]

[87] Cartwright, *op. cit.* p. 184.
[88] *Strafford Letters*, i. pp. 2, 4.
[89] *Ib.* App. '*Life*', by Sir G. Radcliffe, ii. p. 434.
[90] *Ib.* i. p. 4.
[91] S. P. Dom. Jas. I. cix. 10 July 1619.
[92] Cartwright, *op. cit.* p. 198 ff.

The commission of inquiry into the causes of the decay of trade, by bringing into sharp conflict the interests represented by Savile and Wentworth respectively, and so giving each the support of a large party, added to their personal feud the bitterness of party spirit. The trial of strength came in 1625 when the elections for Charles I's first Parliament gave the rivals an opportunity for appealing to the county. Wentworth won; but Savile would not accept defeat, and he accused the sheriff, Sir Richard Cholmley, Scrope's kinsman and Wentworth's friend, of having interrupted the polling when he saw that it was likely to go against the candidate he favoured. The House of Commons ordered a new election; but Savile gained nothing by it, for Wentworth was again returned. Having failed to win the electors to his cause, Savile now turned to the Crown, that is, to Buckingham, whom Wentworth had displeased by his attitude in Parliament; and at the end of the year Wentworth was pricked as sheriff of Yorkshire to keep him out of the Parliament called for 1626. This time Savile had his way, and was duly returned as knight of the shire.

Savile owed his victory to his known opposition to the Lord President, whom the electors persuaded themselves he would question in Parliament.[92a] There had been many changes in the North since the Pilgrimage of Grace, not the least being that which had made the Yorkshiremen, especially those of the West Riding clothing towns, the sturdiest of Protestants, not to say Puritans. So Lord Scrope's leniency to the Catholics had made him very unpopular even among the gentlemen of the East Riding; but protest was useless so long as the King adhered to his Spanish policy, and the understanding with France which replaced it was not more propitious. But the revival of persecution which heralded the outbreak of war with France encouraged Scrope's enemies to hope for his downfall; so Savile, who had a grudge of his own against the

[92a] *Strafford's Letters*, i. p. 32, 5 Dec. 1625.

Lord President for his goodwill to Wentworth, was returned at the head of the poll.

It seemed a good omen that on the day before Parliament met, Lord Sheffield, dismissed from the Presidency for his rigour towards recusants, was created Earl of Mulgrave; and it was with confidence that the Commons on the 11th of March presented a petition that the King would remove from all places of authority and government the numerous known or suspected recusants who had of late years been put in commissions of oyer and terminer, of the peace, and so forth, among them being specially noted the Lord President of the Council in the North and his friends.[93] Scrope's dismissal seemed certain, when the attempt of the Commons to impeach Buckingham led Charles to dissolve Parliament.

Savile's defeat was only momentary. The 'sly old fox's'[94] real aim had been not so much Scrope's downfall as his own advancement; Scrope, anxious only to keep his office, was quite ready to come to terms with his opponent. So Buckingham, as the patron of both, found it easy to effect an agreement between them by which Scrope remained Lore President while Savile became Vice-president with the real control of the Council in the North. Savile, who was admitted to the Privy Council and restored to his old office of *custos rotulorum* in July 1626, soon justified his appointment and earned rapid promotion by his activity as a Commissioner for raising the Forced Loan demanded in 1627. Through Buckingham's influence he was made Comptroller of the Household, and in July 1627 Receiver of the composition money paid by recusants north of the Trent;[95] and a year later he was created Baron Savile of Pontefract, he being Steward of that Honor.[96] Nor were

[93] *Hist. MSS. Rep.* iv. Ap. *House of Lords MSS*, 11 March 1626; Rushworth, i. p. 391 ff.

[94] Cartwright, p. 225.

[95] *Dict. Nat. Biog.* Savile had long coveted this office, for which he had offered £8000 a year in May 1610 (S. P. Dom. Jas. I. liv. No. 78); but it was given to Sheffield in June 1612 (ib. lxix. No. 71).

[96] Thoresby, *Ducatus Leodensis*, p. 150.

his supporters overlooked. In June 1627 Scrope was made Earl of Sunderland and his kinsman, Sir Thomas Bellasis, Lord Fauconberg;[97] a little later Sir Thomas Fairfax of Denton, whose activity in collecting the Forced Loan rivalled Savile's own, was created Viscount Fairfax of Cameron.[98]

So secure did Savile now seem to be in Buckingham's favour that many who had hitherto followed Wentworth turned to his successful rival. Among these was Sir Arthur Ingram[99] whose rascality had nearly failed to bring him safely through a storm that threatened to make shipwreck of his fortunes. After the abortive inquiry of 1616-19 he had held on to the Alum enterprise, drawing the only profits that were made; but in 1623 Sir John Bourchier, in an evil moment for himself, was fired with a desire to get the Alum Works once more into his own hands, and, to get rid of Ingram, charged him with misappropriating funds entrusted to him for the Works. Cranfield could no longer protect his friend; for Buckingham, whom he had offended by opposing the Spanish war on which the favourite had now set his heart, was already intriguing for his downfall.[100] An Exchequer commission appointed in March 1624 to investigate the charge elicited evidence so damaging

Savile's son and heir Thomas shared his father's fortune, if indeed it were not he who obtained it for him. Knighted in March 1617 he was also made Steward of Wakefield; then in Jan. 1622 he was made Receiver of the Honor of Tutbury, and in Dec. 1626 Steward, Forester and Warden of the Forest of Galtres; elected M. P. for York in March 1628, he was unseated on petition and consoled with the title of Viscount Savile of Castlebar in June 1628, a little more than a month before his father's barony was created (*Dict. Nat. Biog.* 1. p. 374.)

[97] 19 June 1627 (*G. E. C.*). See Young's *History of Whitby*, p. 828-30, for the relationship of Scrope, Sir Hugh Cholmley, Sir Thomas Osborne, and Henry Bellasis through Katherine, daughter of the 1st Earl of Cumberland, who married (1) John, Lord Scrope and (2) Sir Richard Cholmley of Whitby Strand.

[98] *G. E. C.*; Cartwright, p. 204.

[99] *Ib.* p. 226-7.

[100] Gardiner, *op. cit.* v. pp. 228 ff.

to Ingram that he had to withdraw from the interprise ;[101] and when the commission of the Council in the North was renewed on Charles I's accession, his name was omitted from it by the king's command, although he remained Secretary, his patent being for life. Ingram protested in vain that there had been no Secretary since the erection of the Court but had had place in the Council. Buckingham remained inexorable, even though he surrendered all interest in the Alum Works in December 1625 ; and it was not till the following April that the Duke gave way and ordered that Ingram, 'who had done and was doing good service in this Parliament', should be re-admitted to the Council in the North.[102] Ingram at once attached himself to Savile, and was rewarded by the appointment of his son as Deputy Secretary in January 1627, and by his own re-admission to the Council in Bourchier's place when the commission was renewed in 1627.[103]

Under such a Vice-president and Secretary, it is hard to believe that the Council in the North escaped all taint of corruption. Neither Savile nor Ingram was an honest man ; their sole aim was to enrich themselves, no matter how discreditable the means. It seems, however, to have been chiefly in the execution of the Council's collateral commissions for compounding and so forth that Savile and his associates found the opportunity for gain that they desired ;[104] and there is no evidence that the administration of justice, which was now under the sole control of the legal members, was affected to any extent. It might have been

[101] Price, *op. cit.* p 95-6.

[102] S. P. Dom. Chas. I. ii. Nos. 15, 79 ; ib. iv. Nos 51, 93 ; ib. xi. No. 57 ; ib. xxiv. No. 3 ; ib. li. No. 40. Was acquiescence in the grant of Lepton's office to Sir Thomas Momson part of the price that Ingram paid for reinstatement ? The juxtaposition of dates is suggestive.

[103] Bourchier's name appears in all commissions from 17 July 1616 to 8 July 1625 inclusive, but not in that of 23 July 1627 (Pat. 3 Car. I. p. 25. No. 15).

[104] P. 402-3. In May 1610 Savile had offered to farm the Yorkshire resusancy fines for £8000 a year ; S. P. Dom. Jas. I. liv. no. 78.

otherwise had the Savile faction kept its power for long; but the very corruption that had given it the rule of the North proved its undoing. A little more than two years after he struck the bargain that made him the virtual ruler of the North, Savile fell from power, dragging his confederates with him.

The change of front that made the leader of the opposition to Lord Scrope his Vice-president seems to have taken Wentworth by surprise. After his election triumph in 1625 Buckingham had offered him his favour, thereby drawing from Wentworth a promise that he was ready to serve him as an honest man and a gentlemen and would take no part in a personal attack on him.[105] It soon appeared that service rendered on this condition must fall short of the Duke's desires. The insight into the actual state of the country that Wentworth had gained as a member of the commission of inquiry into the causes of the decay of trade in 1623, had convinced him that internal affairs should have first consideration, and he spoke strongly against granting subsidies for the war with Spain on which Buckingham had set his heart.[106] After this it was but a reasonable precaution on the Duke's part to have Wentworth pricked as sheriff of Yorkshire in November 1625 so that he might not be elected for the Parliament summoned for 6 Feb. 1626. Nevertheless Wentworth was so confident of the strength of his position as the leader of the Yorkshire gentry that in January 1626, when it was generally believed that Scrope was about to save himself from the attack of the Commons by resigning the Presidency, he wrote to Conway, seeking his own appointment to the vacant place.[107] Even if Scrope had been driven from office it is unlikely that Buckingham would have overlooked Wentworth's opposition to his policy so far as to advance him to 'the highest pitch of Northern honour'.[108] As it was,

[105] *Strafford Letters*, i. p. 34. [106] Gardiner, v. p. 426-7.
[107] S. P. Dom. Chas. I. xviii. No. 110, 20 Jan. 1626.
[108] *Strafford Letters*, i. p. 48.

the understanding with Savile and Buckingham by which Scrope saved himself made Wentworth's exclusion from public office a matter of course.

The advancement of his enemy to be virtual governor of the North at once made Wentworth the leader of the opposition to arbitrary government. His refusal to use his influence to obtain for the King a free gift from his Yorkshire subjects was punished by his dismissal from the office of *custos rotulorum* and from the commission of the peace in July 1626; and for his resistance to the Forced Loan demanded in April 1627, he and his friend George Ratcliffe were imprisoned in Kent. This course made Wentworth immensely popular, and he was returned to the Parliament of 1628 by a large majority. Almost at once he became the leader of the Commons, who at his instigation drew up and forced on a reluctant King the Petition of Right against arbitrary taxation, arbitrary imprisonment, martial law, and billeting. When the dissolution of Parliament sent him back to Yorkshire, he found himself even more popular than before.[109]

The worth of his popularity was soon to be tested. Savile, after all, was but a man of straw. He owed his place, not to his own merits, but to Buckingham's favour; so the Duke's murder in August 1628 was the signal for his protegé's downfall. Relying on his influence at court, he had abused for his own gain his power as commissioner for compounding with recusants and as Receiver of the composition money. Now retribution overtook him; for in the last days of October, 'there (was) a great complaint to the lords of the Council against Sir John Savile, the Comptroller, urged by the Lord Wentworth, late Sir Thomas Wentworth, concerning large bribes Sir John Savile should have taken from the Papists of the North in making their compositions'.[110] The charge seems to have been proved,

[109] *Dict. Nat. Biog.* ix. p. 265 ff.

[110] Rev. Joseph Mead to Sir Martin Stuteville, 2 Nov. 1628; Birch, *Court and Times of Charles I*, i. p. 421.

for on the 21st of November 'a certificate respecting some enormities of late grown up in the North parts' was sent to the Lord Keeper who was to consult the Attorney-general and some of the King's Counsel upon the steps to be taken for preventing further mischief.[111] The Receivership was taken from Savile, and he ceased to be Vice-president of the Council in the North, although he was not put out of the Commission. Nor was he dismissed from the Comptrollership. Yet it would seem that he was not allowed to exercise the office in person, for Clarendon tells us that he was sent down to Yorkshire 'a disconsolate and dishonoured old man'.[112]

In his fall, Savile brought down his nominal superior, Lord Scrope, now Earl of Sunderland, and on the 22nd of December he was relieved of both the Lieutenancy of Yorkshire and the Presidency of the Council in the North on the ground of his 'long indisposition of body', Charles giving him £3000 as 'satisfaction for these offices'.[113] An assurance that the king was fully satisfied of his 'fidelity and uprightness in the discharge of both the said places' and that he had come short of none of his predecessors therein, could not disguise the fact that he had really been dismissed because the government of the North under his rule had become too corrupt and inefficient to be tolerated any longer. As Christopher Wandesford wrote to Wentworth the new President, 'Your Predecessor, like that candle hid under a Bushel, while he lived in his Place, darkened himself and all that were about him, and dieth towards us (excuse me for the Phrase) like a Snuff unmannerly left in a Corner'.[114]

[111] S. P. Dom. Chas. I. cxxi. No. 27.

[112] Clarendon, *Hist. of Rebellion*, Bk. ii § 101.

[113] Harl. 1877 f. 77; Whitaker, *Life and Letters of Sir George Radcliffe* p. 174.

[114] *Strafford Letters*, i.p. 49.

CHAPTER II.

Thomas Wentworth, Lord President of the North.

It is customary to write of the eleven years during which Charles I ruled without Parliament as eleven years of tyranny and misgovernment. Years of arbitrary, or at least bureaucratic, government they certainly were, but they were also years of steadily increasing efficiency in administration. It is now recognised that it was during these years that the foundations of England's maritime greatness were laid ;[1] and it has been noted that the interests of the wage-earning classes were never so carefully watched, the economic and social legislation of the sixteenth century never so strictly enforced, as during the "Eleven Years' Tyranny".[2] Buckingham himself, although no statesman, was an efficient administrator, and his rise to power had been marked by a reform of the naval administration. He had also shown keen interest in the development of trade ; and in the first year of Charles I's reign principles of trade regulation, based on the evidence taken by the Commission of Inquiry in 1623, were laid down, which were 'at least as sensible as any that were either professed or followed' after the establishment of parliamentary government.[3] But it was not till the war with France broke out that an inefficiency in administration and a laxity in enforcing legislation were revealed which effectually roused the Council of State from its apathy towards local administration. The war was still in progress when Buckingham,

[1] Corbett, Sir J., *The Successors of Drake*, and *England in the Mediterranean;* Oppenheim, *The Administration of the Royal Navy.*

[2] Leonard, *English Poor Relief,* p. 150.

[3] Meredith, *Eng. Econ. Hist.* p. 186.

absorbed as he was in it, set himself to repair, if it were possible, the mischief done by long years of carelessness and corruption. After his murder, the war-fever having died down, the men whom he had put in authority took up his work with resolution. The old policy of *laissez-faire* in local government was abandoned; the interference which had hitherto been confined to years of scarcity, was now to be continuous, special attention being given to enforcing the laws for the relief of the poor and for the regulation of trade.[4]

This change of policy made it imperative to restore the efficiency of the Council in the North as a governmental body. The first step to this end was taken when Sunderland and Savile were deprived of their offices; the second was to place the Council under the control of a President who could be trusted to enforce the laws without fear or favour. Such a one, it seemed, was Sir Thomas Wentworth, who, in spite of his opposition to the Crown, had won from Charles the admission that he was an honest gentleman. This, however, was not his only qualification for the office that had been so much discredited by Sheffield and Scrope. His legal training and his experience as Justice of the Peace and as sheriff qualified him for the administration of justice. His knowledge of the poor and the laws concerning them was such that one of the judges of assize, a great lawyer, was pleased to learn his opinion thereon. His management of his great estates showed him to be an efficient administrator.[5] His popularity with the gentry and the landed interest generally was a valuable asset for one who would have to run counter to many private interests. Even his quarrel with the Saviles and their faction was only additional security that he would not hesitate to enforce laws whose due execution would be more bitterly resented in the clothing towns than anywhere else. It was perhaps with some thought of his possible use as Vice-president,

[4] Leonard, *op. cit.* p. 150.

[5] *Strafford Letters*, i. p. 29; ii. p. 433-4.

if not yet as President, that he had been made a Viscount on the same day that his rival was made a Baron.[6] Now that he had furnished the government with the necessary pretext for depriving both Sunderland and Savile of their offices, it was only fitting that he should be advanced to the highest place in the northern administration. So on the 15th of December 1628 Wentworth was made Lord President of the Council in the North.[7]

The offer of this coveted office to Wentworth and his acceptance of it only a few months after he had distinguished himself by securing the adoption of the Petition of Right have been very generally regarded as the offer and acceptance of a bribe to a dangerous opponent to cease from opposition, partly because there seemed no other reason why Charles should thus single out for advancement one of the most prominent leaders of the Commons, partly because the acceptance of office under the Crown seemed inconsistent with the political principles hitherto professed by Wentworth. Now, it has just been shown that there is good reason for believing that the Presidency was offered to Wentworth, not because he was the leader of the opposition to the Crown — a position which had during the last weeks of the session passed to Sir John Eliot — but because his passion for good government, his concern for order and the public service, marked him out as the best man to be entrusted with the difficult task of reviving the governmental authority of the Council in the North. Wentworth, again, had been the defender of personal liberty, not of parliamentary sovereignty, the opponent of arbitrary, not of strong, government. His 'ideal was centred in a strong state, exerting power for the common good',[8] and it was his misfortune rather than his fault that he thought all England was like his native North, given over as a prey to faction which made impossible the just govern-

[6] 21 July 1628 (*G. E. C.*).

[7] Pat. 4 Car. I. p. 3. m. 1.

[8] Morley, *Oliver Cromwell*, (1908 edn.), p. 32.

ment of the people by the people. His experience taught him that only the authority of the Crown could secure the due execution of the law and protect the people from oppression by those who claimed to speak for them. He cannot, therefore, be fairly charged with apostacy if, having forced the king to admit his obligation to obey the law, he then consented to help him in forcing the subjects to obey it too.

From the first, the 'Thoroughness' of Wentworth's administration more than justified his appointment as Lord President of the North. He had, it is true, far less scope than his Tudor predecessors. Even in Elizabeth's time the Council had left the execution of the commission for ecclesiastical causes to their ecclesiastical colleagues, and now, when Laud ordered the Dean and Chapter of York to pull down the houses built against the Cathedral and the one inside it, he did not invoke the help of the Council in the North, nor yet when he instructed the Dean and Chapter of Durham to pull down the mean tenements that had been built over the churchyard.[9] The enclosure movement was no longer a menace to society, and with the union of the crowns the interest of the government in checking the decay of tillage in the northern shires had ceased. The Commission for the Middle Shires had not been renewed at Charles I's accession, but the Council in the North did not regain the criminal jurisdiction in the Border counties that it had lost long ago to the Wardens of the Marches, for that jurisdiction now passed to the Justices of the Peace or of Assize. Even in Yorkshire the Council had ceased to be the medium of communication between the central executive and the local authorities, and it is noticeable that even after Wentworth had re-established the Council's control over local administration, the Justices of Peace continued to make their reports and returns direct to the Privy Council or to the Exchequer as the case might be, the Council in the North intervening only to

[9] S. P. Dom. Chas. I. ccxxxix. No. 56; ib. ccxl. No. 10.

punish the negligent and the recalcitrant. Even so, the new President had scope enough and to spare for his energies.

Wentworth lost no time in making public profession of the principles on which his government in the North was to be based. Addressing on 30 December 1628 the Council and the gentry who had gathered at York to welcome him coming among them for the first time as Lord President, he made a clear statement both of his political principles and of the policy of his administration.[10] Touching lightly on the charge of apostacy brought against him by those who regarded the ends of sovereignty and of subjection as 'distinct, not the same, may, in opposition', he said

> "Princes are to be indulgent, nursing fathers to their people, their modest liberties, their sober rights ought to be precious in their eyes .... Subjects on the other side ought with solicitous eyes of jealousy to watch over the prerogatives of a Crown, the authority of a king is the keystone which closeth up the arch of order and government, which contains each part in due relation to the whole".
>
> "The faithful servants of king and people", he went on, "must look equally on both, weave, twist these two together in all their counsels, study, labour to preserve each without diminishing or enlarging either, and by running in the worn wonted channels, treading the ancient bounds, cut off early all disputes from betwixt them".

Leaving himself, he turned to

> "Observe some rules which concern the place ; a distinction by which I shall futurely govern myself, for in relation to my own person never President expected so little ; in relation to the place, never any more jealous of the honour of his master, never any that looked for more".

This — as it proved — much-needed warning given, Wentworth turned to the Council,

> "Unity inwards amongst ourselves; uniform justice outwards to such as come before us",

were, he trusted, the acquired habits of the Council ; and so he passed on to

> "the bleeding evil which, unless it be stanched, closed by a ready, a skilful hand, will quickly let out the very vitals of this Court, I mean prohibitions ; the necessity whereof cries not alone to us that are judges to attend the cure, but as you have heard his Majesty himself requires it of us".

[10] Tanner MSS. lxii. f. 300, printed in *The Academy*, 5 June 1875, p. 352-3.

This must have stirred his hearers, for all knew that the Savile faction, having lost its control over the Council in the North, would call in question its jurisdiction, and that the fight lost at Court would be renewed in the courts. In a hush of expectancy Wentworth went on:

"Well, the disease is recoverable. The remedies I propound are two; the first, to assume nothing to ourselves but what is our own, being ever mindful that the voice which speaks here is *vox ad licitum*, we can go no farther than our instructions lead us, move only within their circle ..... Assure yourselves, the way to lose what we have is to embrace more than belongs to us. You that are of the fee must guide us herein, you are answerable for it, it is expected from your learning and experience, and therefore I am confident you will carefully intend it. Secondly, we must apply a square courage to our proceedings, not fall away as water spilt upon the ground, from that which is once justly, warrantably done, nor yet give off upon prohibitions till the suitor hath the fruit of his plaints; for the Commonwealth hath no more interest herein than that justice be done, whether with us or elsewhere it skills not; the inherent rights of a subject are no ways touched upon here; these are only disputes between courts, actuated many times out of heat, nay, out of wantonness. And thus the seats of justice, which should nourish, establish a perfect harmony betwixt the head, the members and amongst themselves, degenerate, become instruments of strife, of separation, whiles these furies, like that enraged Turnus in the poet, catch what comes first to hand, tear up the very bounderstones set by the sobriety of former times and hurl them at their fellows in government, and therefore I will declare this point clearly that albeit none before me reverenced the law and the Professors of it more, having the honour to be descended from a Chief Justice myself, yet if we here take ourselves to be within, they there conceive us to be out of our instructions, I shall no more acknowledge them to be our judges than they us to be theirs, but with all due respect to their persons, must on these questions of jurisdiction appeal to his Majesty, the sovereign judge of us all. Neither do I this barely in relation to my master's command, but to retain in ourselves a capacity, 1st to serve you, for if we yield up our arms, how shall we exercise our virtues among you. 2ly. in consideration of the good and benefit of these parts for surely, however some may desire a dissolution of this court, yet I persuade myself as soon as the number, the heat of small suits carried far remote at great charges were multiplied amongst them they could confess their ancestors to have been much wiser who petitioned, gave a subsidy for erecting the Provincial Courts than themselves, who are now so much for the taking them away. May the tent of this

> Court then be enlarged, the curtains drawn out, the stakes strengthened, yet no farther than shall be for a covering to the common tranquility, a shelter to the poor and innocent from the rich and insolvent".

Having thus thrown down the gage both to his opponents in the North and to the Courts at Westminster, Wentworth turned to the clergy, with whom he courted a close confidence; to the Deputy Lieutenants, whom he admonished to took well to the arms of the county; to the Justices of Peace, whom he urged to become vigilant in the execution of their duty as they would answer for it to the Council; to the Attorney,[11] 'the eye of the Court' whom he warned to look abroad upon the pressure of the grievances of the subject, to bring delinquents to justice, that no offenders may go free, especially taking care that the fees of Escheators, Feodaries, Under-Sheriffs, Clerks of the Market, Attorneys, Registers, Bailiffs and such like, were reduced to moderation; and to those practising in the Court, for whose guidance he laid down four rules which should govern their conduct of cases before him.

Finally, he offered himself to serve for good even the meanest man within the whole jurisdiction, asking only that all should lay aside and forget private respects to join hands and hearts that they might go on cheerfully as one man in the service of the public, ending with a suit that they should judge him not with their ears only, but with their eyes also.

Knowing his enemies as he did, Wentworth cannot have been surprised that his plea for forgetfulness of private animosities fell on deaf ears, while his challenge to those who were ever gainsaying the Council was taken up so quickly that the very first session of the Council under

[11] This was Wentworth's friend, George Ratcliffe, who now replaced Sir William Dalton, who had been King's Attorney at York for many years (Harl. 2138 f. 91). The latter is first mentioned as the King's Attorney in the Instructions of 1616 (Pat. 14 Jac. I p. 22d.), but he was probably the immediate successor of Jonas Waterhouse, who died in 1611 (S. P Dom. Jas. I. lxxv. No. 68); he was admitted to the Council as a legal member in 1628 (Pat. 4 Car. I. p. 3d.).

his presidency was marked by the renewed interference of the common law courts which once more issued prohibitions and writs of *habeas corpus*. As this course, unchecked, would defeat the object for which Wentworth had been made President, the Attorney-general was directed [12] to make certain alterations in the Instructions defining its judicial authority more exactly, and to consider the means by which the courts at Westminster could be prevented from interfering with the administration of justice before the Council by issuing writs of *habeas corpus*, prohibitions, and rules to stay proceedings.[13] So there was added to the Instructions enrolled on 22 June 1629 a new Article which, after reciting how some persons, who had admitted the jurisdiction of the Court at York by their answers, often sought for a prohibition out of one of the Courts at Westminster, and if imprisoned for refusal to obey a decree, would sometimes procure discharge by a writ of *habeas corpus*, went on to forbid the granting of prohibitions save when the Council exceeded the limits of the Instructions, and the discharging of any prisoner committed for not performing a decree of the Court given in accordance with the Instructions until he had performed the same.[14] With the copy sent to York went a covering letter admonishing the Council to be very careful not to exceed the Instructions in any particular, which closed with a declaration that 'we will not have our Courts of Justice thus to clash one with another, but that in all these questions of jurisdiction assuming the judgement

[12] S. P. Dom. Chas. I cxlv. No. 23.

[13] March 1629; ib. cxxxix. Nos. 2, 58. Border Papers, iv. No. 588 (*For. Cal. 1560-2*, No. 911), which is dated in the Calendar 1561 proves on examination to be the King's letter directing the Attorney and Solicitor-general to consider the Articles to be inserted into the Instructions, and to supply the defects mentioned, these being identical with the defects enumerated by Conway in his letter to Attorney-general Heath, 18 March 1629 (S. P. Dom. Chas. I. cxxxix. No. 2).

[14] Pat. 5 Car. I p. 18. m. 14 (Commission); and Pat. 5 Car. I. p. 17. m. 8 (Instructions); Cf. Harl. 2138 f. 88.

thereof to ourselves, we will ever be ready to hear and judge equally betwixt them and to order that which shall be meet for the good and speedy administration of justice to our People, it being indeed more proper for ourselves (as most indifferent) to settle these differences than any other persons concerned therein, either in extent of power or point of benefit'.[15]

His hands strengthened by this endorsement of his declared policy in the matter of prohibitions, Wentworth now gave himself up to doing the business of the Commonwealth,[16] reviving trade, and in the meantime relieving the misery of the poor by insisting on the execution of Elizabeth's social legislation. The laws for the regulation of the cloth trade were strictly enforced, apparently with excellent results, and trade began to increase.[17] The clothiers, however, bitterly resented the all too efficient supervision to which they were now subjected, and the faction of the Saviles, weakened for a time by the leader's activity in connection with the Forced Loans and by the disclosures as to his dealings with the recusants, became strong again.

The relief of the poor was a more difficult problem. The execution of the Poor Law had never been a reality, and the necessary machinery existed hardly anywhere. A proclamation issued in May 1629 for the relief of the unemployed did something to lessen the distress caused by a sharp rise in the price of corn and a crisis in the cloth trade; and the regulation of wages and prices of victuals, by aiding the whole body of workmen, did more, but roused the resentment of the farmers as well as the manufacturers. A more important measure was the appointment in January

[15] S. P. Dom. Chas. I. cxlv. No. 23; 22 June 1629.

[16] "Let us first do the business of the Commonwealth, appoint a committee for petitions, and afterwards, for my part, I will consent to do as much for the King as any other"; Wentworth in the House of Commons, 1625 (Gardiner, *op. cit.* v. p. 427).

[17] Cunningham, *op. cit.* ii. p. 311.

1631 of a permanent royal commission for the relief of the poor, with power to appoint local committees. The commissioners divided themselves into groups of six or seven members, one group for each circuit, Wentworth being the leading member of the group responsible for the northern circuit. At the same time there was issued for the relief of the poor at all times a Book of Orders such as Elizabeth had issued only in years of scarcity. These measures were successful; and it has been estimated that the administration of the Poor Law and the supervision of trade and industry were never so efficient before the nineteenth century as they were between 1629 and 1644.[18] But the sincere desire to promote the welfare of the 'working' classes which was shown by the Privy Council during the years that Charles I governed without a Parliament,[19] met with little sympathy among the squires and burgesses who controlled Parliament; so, although the Archbishop of York testified that 'the king has made a noble choice of his great commander here, the Lord President of his Council, who will give a worthy account of his stewardship',[20] the price that Wentworth had to pay for the efficiency of his administration and his care for the interests of poor men,[21] was the loss of all his early popularity among the men of his own class.

Wentworth's enemies were quick to take advantage of his fall from popular favour; and, supported by all who were too closely touched by his execution of the law, they set themselves to work for his downfall. None of them was

[18] Leonard, *op. cit.* pp. 150 ff; S. P. Dom. Chas. I. clxxxii. No. 8. The commission and orders are printed in Rushworth, ii. App. pp. 82 ff.

[19] Unwin, *Industrial Organisation*, p. 143.

[20] Archbishop Harsnet to Conway, 6 Oct. 1629; S. P. Dom. Chas. I. cl. No. 28.

[21] One of the earliest tasks of the Council under Wentworth's Presidency was to deal with the dispute of Sir Cornelius Vermuyden with the Commoners of Hatfield Chase which he was draining. Wentworth's championship of the poor people was very marked; see S. P. Dom. Chas. I cclxxii-ccccli.

of the stuff of which martyrs for liberty are made, so they made no attempt to take up Wentworth's old rôle of leader of the opposition to arbitrary government. It was more convenient as well as more congenial to bring the Lord President into public contempt as 'a faithless minister in those trusts which His Majesty had vouchsafed betwixt him and his people';[22] and there was no insult or slander that malice could suggest that they did not heap on him. The Saviles of course had to remain in the back-ground until men had somewhat forgotten how the late Vice-president had come to be dismissed; but after the deaths of Sunderland and Savile in 1630[23] they found a sufficiently respectable leader in the late President's kinsman, Lord Fauconberg. It may be that he took on himself his dead friend's quarrel with his supplanter the more readily because in July 1630 Wentworth was made Bailiff of Richmond, Chief Forester, and Keeper of the Castles of Richmond and Middleham, with a fee of £50.6s.4d.;[24] for these offices had been held by a Scrope of Bolton for well-nigh a century, and it is not unlikely that Fauconberg had desired them for his son Henry Bellasis. However this may have been, Fauconberg and his faction began to carry themselves with personal neglect and disregard towards the Lord President.[25] At no time could Wentworth's haughty temper brook disrespect; so when Henry Bellasis at last went so far as to keep his hat on his head when the Lord President was going out of the Council Chamber with the King's Mace-bearer before him, all the rest of the company being uncovered, the ill-mannered youth was summoned before the Privy Council (6 April 1631) and ordered to apologise to the Lord President. This he refused to do unless allowed to draw an impertinent distinction between 'my Lord President' and 'my Lord President's

[22] Wentworth concerning Fauconberg, Dec. 1630; *Coke MSS.* i. p. 420.
[23] Sunderland died 30 May 1630; Savile, 31 August 1630 (*G. E. C.*).
[24] S. P. Dom. Chas. I. clxx.
[25] *Coke MSS.* i. p. 420.

office'. A month's imprisonment in the Gatehouse brought him to his senses, and forced from him an apology for his insolence;[26] but he never forgave Wentworth for his humiliation, and he had his revenge just ten years later.

To intrigue at Court for grants of places and fines in the Court of York, and to buy up reversions, were obvious devices for annoying the Lord President; but they became useless when Wentworth induced the Earl of Bridgewater, Lord President of the Council in the Marches of Wales, to join him in a petition to the King that no grant of place or fine in their Courts should pass the Signet without notice to the Presidents. As this was in effect a request that established practice should be confirmed, the desired order was given to the Secretaries, and slights of this kind could no longer be passed on the President.[27]

It was a far more serious matter that the Lord President should be accused of injustice, or that the jurisdiction of the Council should be assailed: both were attempted by Lord Fauconberg. Before the end of the year 1630 Wentworth learned that Fauconberg had preferred a petition to the King charging him with injustice, and with some difficulty he managed to get a copy.[28] The charges seem to have been found on investigation to be simply the outcome of a plot that Fauconberg had laid with Sir Conyers Darcy against the Lord President's good name.[29] Darcy

[26] Rushworth, ii. p. 88.

[27] July 1631; S. P. Dom. Chas. I. cxcvii. No. 14.

[28] *Coke MSS.* i. p. 420.

[29] There is among the MSS. of the House of Lords (*Rep. Hist. MSS. Com.* iv. p. 61) a petition presented 24 April 1641 which seems to throw light on this episode. In it, George Hall declared that 9 years ago (i. e. 1631-2) he was sent for by Strafford, Lord Lieutenant and President of the North, and ordered to produce a letter written by Lord Fauconberg a year before (i. e. 1630-1) concerning the committing of one Hewardin to the House of Correction. The petitioner being unable to do so, or to do more than depose to the contents, lay in prison 33 weeks, often examined to get evidence against Lord Fauconberg and Sir Conyers Darcy, till on protesting in open court that he could say no more, he was discharged on giving surety for appear ance, and paying a fine and damages. Prays redress.

stood his trial and was convicted;[30] but Fauconberg, when ordered by the King to appear before the Council in the North and put in his answer, withdrew to London, whence Wentworth asked leave to fetch him by the serjeant-at-arms.[31]

This example was followed by Sir Thomas Gower, who, when summoned to appear before the Court at York to answer an information that he had in open court on the bench spoken scandalous words against the King's Attorney there, went up to London, alleging that he could not get justice before the Council in the North because no man would be of counsel with him for fear of the King's Attorney, who was Wentworth's friend George Ratcliffe.[32] In this case the order for appearance had been made by the Council itself. It was therefore a case of contempt of court; so, relying on precedents, Wentworth issued a commission of rebellion and sent the serjeant-at-arms to arrest Gower without asking leave of any. The arrest was effected in November 1632 in Holborn, where the fugitive had quartered himself 'close by others of the like affections, they, their children and followers, so demeaning themselves against the Government as they are there wantonly termed the rebels of the North'. Gower at once petitioned the Lord Keeper for release, who simply moved that bail should be taken for his appearance the last week of the sitting at York, which was concurred in.[33] Sir Thomas ignored the offer of bail, and petitioned the Lords of the Council for release on the ground that the Council in the North had no authority to send their own officer to arrest him in London.[34] The Council referred the matter to the Attorney-general, who was directed to discover from Mr. Ratcliffe what Articles of the Instructions of the President and Council

[30] Rushworth, ii. p. 161; cf. *Trial of Strafford*. p. 22.
[31] 1 Oct. 1632; *Coke MSS.* i. p. 475.
[32] S. P. Dom. Chas. I. ccxxxii. No. 55.
[33] Ib. ccxxvi. No. 1.
[34] Ib. ccxxv. No. 58.

in the North were relied on as authorising the arrest.[35] Noy's report, made in December 1632,[36] was in favour of the Council in the North, and in February 1633 both Gower and Fauconberg were sent to York in the Serjeant's custody, there to make humble submission to the Lord President.[37]

It was now high time that the authority of the Council in the North should be vindicated, and that the campaign of calumny against the Lord President should be stopped. The fear of opposition to the new policy of 'Thorough', which had led to Wentworth being appointed to the Presidency of the North, had been justified by the event. Nowhere was resentment at the measures taken by the government to improve the defence of the country and to provide money for the administration deeper than in the North, where resistence to them grew daily. Especially among the landed gentry, whose leader Wentworth had been, there reigned 'a humour and liberty .... of observing a superior command no farther than they liked themselves, and of questioning any profit of the Crown .... which might enable it to subsist of itself, without being necessitated to accept of such conditions as others might easily think to impose upon it'.[38] Warned by the resistence to the Forced Loan, the government was careful to extract money from the people in strictly legal ways only; but, as the precedents for the most part came from an age when land was the chief form of wealth the burden fell almost wholly on the landowning class. The failure of English arms at Cadiz and the Isle of Rhé had made the English soldier the laughing-stock of every guard-room in Spain and France;[39] but the effort made by the Privy Council in 1629 to re-organise the trained bands and render them more

[35] Ib. ccxxv, no. 59.

[36] Ib. ccxxvi. no. 82.

[37] P. C. Reg. xlii. pp. 291, 452, 508, 520.

[38] Wentworth to Doncaster, Sept. 1632; *Somers Tracts*, iv. p. 198.

[39] Firth, *Cromwell's Army*, p. 6.

efficient, only irritated the landowners, great and small, on whom the burden fell[40]. The Catholics could only submit when the penal laws were once more enforced against them;[41] but the Protestants were offended when the recusancy fines and forfeitures were converted into a regular source of income for the Navy by the renewal of the commissions for compounding with recusants, although the compositions demanded were higher in the North than elsewhere[42]. Most of all, the landed gentry were enraged by the issue in January 1630 of a commission for compounding with those who, holding land worth £40 a year by military tenure, had not taken up knighthood at the coronation.[43] One or two bold spirits, when summoned before the Council at York, refused to pay unless compelled to do so by common law process; but when one of them, James Maleverer, was tried in the Exchequer in May 1631, the Court refused to fine him, saying that he must compound, and issued writs of distress against him to the amount of £2000, most of which he had to pay. After this, it was useless for Wentworth to point out that 'the little finger of the law was heavier than the loins of the king'; for the governing classes at least the President and Council in the North were henceforth identified with arbitrary government.[44]

[40] Orders were sent to the Lords Lieutenants to see that the Trained Forces were properly armed and drilled, and possessed the proper complement of men and officers. As the gentlemen would not volunteer as captains of the trained bands, the Lords Lieutenants were to select the most capable of them for the post, and report to the Council the names of those who refused to serve. Also the Grand Juries were to assess the counties for the payment of a Muster-master and the purchase of arms and ammunition; if they refused to assess, then the Lords Lieutenants must do so and report to the Council the names of those who refused to pay (Rushworth, ii. p. 9-10).

[41] *Ib.* ii. p. 11. Wentworth was made Receiver of Fines and Forfeitures of Popish Recusants North of the Trent for life on 8 June 1629 (Coll. Sign Manual, Car. I x. no. 28).

[42] Rushworth, ii. pp. 13, 247.

[43] S. P. Dom. Chas. I. clix. no. 32.

[44] Rushworth, ii. p. 135, 147. It seems unnecessary to attempt to reconcile Wentworth's denial with his enemies' assertion that he said that 'the little finger of the king was heavier than the loins of the law'. Apart from

Wentworth's remark had been called forth by the reckless speech of one who in other days had served the Stuarts well. Sir David Foulis, once a confidential servant of James VI, had been rewarded for his share in the intrigues that secured for his master a peaceful accession to the English crown by a grant of the Darcy lands which Henry VIII had given to the Earl of Lennox on his marriage with his niece, the Lady Margaret Douglas. Later, he had been made Cofferer to the Prince of Wales, but when the Prince became king, he retired to his Yorkshire estates. As a deputy-lieutenant, a justice of peace, and a member of the Council in the North to which he was admitted in 1625,[45] he was bound at least to refrain from attacking the Lord President, even if his oath as a councillor had not bound him to maintain the authority of the Court at York. But after he had been excluded from the commission for compounding with recusants when it was renewed in 1630,[46] he joined the faction against Wentworth, and lost no opportunity of sneering at both Council and President, or of urging men to oppose them. Maleverer he praised as the bravest man in Yorkshire for refusing to compound for knighthood, saying that Yorkshire gentlemen had been accounted stout-spirited men, but now in these days they were grown more dastardly and cowardly and wanted their former courage, being so timorous to offend the Lord Wentworth that they would do anything rather than displease him. He also said that, although Wentworth had received much money of the county for knighthood fines, he had not paid the same into the Exchequer,[47] so that

the fact that in this case at least it was cheaper to compound than to pay the legal fine, Wentworth was too proud a man to lie, whereas his enemies were so unscrupulous that only indisputable evidence from an impartial source could justify the acceptance of their word against his.

[45] Pat. 1 Car. I p. 9d. no. 16 ; cf. S. P. Dom. Chas. I. ii. no. 79.

[46] Ib. clxx. no. 20.

[47] Probably the basis of this was the fact that, owing to his wife's death in October 1631, Wentworth, who was much broken by it, did not pay the money he had received into the Exchequer until later. Very likely Foulis had listened to the gossip of some Exchequer official (ib. ccli. no. 42).

when the Lord President had gone into Ireland and his Presidency had been given to another man all who had paid fines to him would have to pay over again. Afterwards, when his son-in-law, Sir Thomas Layton, being Sheriff, was summoned before the Court at York to answer a charge of extortion for levying £39 on a man who had compounded for knighthood under a writ out of the Exchequer, Foulis urged him not to obey, saying that if the letter had been directed to him he would not have read it. The Court at York, he said, was but a paper court, and it had nothing to do with a Justice of Peace, the office of Justice, whose authority was by act of Parliament, being above the Council which had authority by commission only.[48]

Foulis's reckless speeches were not without motive. For in April 1631 he had suddenly been called on to make his account for moneys that he had received when Cofferer to Prince Charles; and as he delayed to do this, auditors had been sent down in August 1632 who found, on casting up his books for 1613-16, that he was £5000 in arrears. Therefore, it was probably, as Wentworth suggested, with some wild hope of diverting attention from himself and so averting discovery, that he brought his charge of embezzlement against the Lord President and tried to stir up resistance to him.[49] Whatever their motive, Foulis's words could not be ignored either by the King whose prerogative had been impugned, or by the Lord President whom he had held up to scorn as a faithless minister, and Wentworth was certainly justified in asking for heavy damages.[50] So in November 1633 Sir David Foulis, his son, and his son-in-law were tried by the Court of Star Chamber on three charges; (1) opposition to the king's service; (2) slanderous words of the Lord President; (3) contempt of the Court at York. Layton was discharged, but Foulis and his son were sentenced to pay, the one £5000 — the amount of his arrears — to the

[48] Rushworth, ii. pp. 215-20; ii. App. p. 65-6; S. P. Dom. Cha. I. ccli. no. 42.

[49] Ib.; ib. ccxxiv. no. 45.

king, and £3000 damages to Wentworth, the other £500 to the king. Sir David was also dismissed from all his offices, and ordered to make acknowledgement of his offences in the Court at York and at the Assizes in that county. Some of the Lords would have passed a lighter sentence in consideration of Sir David's services to the state a generation earlier, but Laud turned the scale against him with a tart little jest: 'All fowls a moulting time, especially of sick feathers'.[51] Neither father nor son would pay the fines imposed, so they were sent to the Fleet where they remained till released by the Long Parliament to give evidence against Wentworth at his trial.[52]

Heavy as Foulis's sentence was, justification for it can be found, not only in the nature of the charges he made, but also in the riotous behaviour of other of Wentworth's enemies, and notably of Lord Eure, who fortified his house at Malton, forcing the sheriff to fetch cannon from Scarborough and batter down the wall before he could enter to take possession of it on a writ from Chancery;[53] of Lord Savile, who with a great company and drawn swords, under colour of preserving the king's game, drove Sir John Jackson and his friends from the field where they were hunting hares;[54] and of Sir John Bourchier, who during Charles I's visit to York in May 1633 riotously broke down an enclosure round a park that the King had just had made in the Forest of Galtres[55] on land that had recently been decreed to him by the Court of Exchequer Chamber upon an information by the Attorney-general against Sir John.[56]

Only the last case calls for special notice, because of its

[50] Wentworth to Cottingham, 4 Nov. 1633; *Strafford Letters*, i. p. 146.

[51] S. P. Dom. Cha. I. ccli. no. 51.

[52] *J. H. L.* iv. p. 129; cf. Rushworth, *Trial of Strafford*, p. 154.

[53] Oct.-Nov. 1632; S. P. Dom. Cha. I. ccxxiv. no. 28; ib. ccxxv. no. 47; P. C. Register, xlii. pp. 231, 235, 287-90, 356.

[54] Star Chamber Cases, Trin. 8 Car. I (1632); Rushworth, ii. App. p. 46.

[55] *Coke MSS.* ii. p. 16; *Strafford Letters*, i. pp. 85-6, 91; *Rep. Hist. MSS. Comm.* iv. p. 41.

[56] 9 Feb. 1632; S. P. Dom. Cha. I. ccxi. no. 31.

connection with the Council in the North. Commanded by the king to try Bourchier,[57] that court fined him £1800, justifying the sentence by the plea that the offence was against the king; but when he had been six months in prison, they asked the Lord President to intercede for him with the king. This he did, on the ground that Bourchier had really acted out of animosity against himself, and was, besides, come of a mad kindred.[58] Bourchier, however, never forgave either Wentworth, who had probably aroused his animosity by securing a lease of the Alum Works for Sir John Gibson as trustee for himself,[59] and at whose trial in 1641 he was one of the earliest and most hostile witnesses, or the king, whose death warrant he signed without hesitation or remorse.

Meanwhile attacks on the Council in the North were following one another in quick succession. Hardly had its magisterial authority been vindicated against Fauconberg and Gower when its authority as a court of equity was impugned. On 8 March 1633 there was laid before the Privy Council the petition of Frances Musgrave who had brought a suit at York against her step-father, John Vaux, and her mother for a large sum of money due to her under a trust. This was a matter of equity only, there being no remedy at common law; yet Vaux had obtained a prohibition out of Common Pleas to stay proceedings before the Lord President and Council in the North. The plaintiff therefore prayed the Privy Council to try the case whether the Lord President and Council should retain the case by Instructions.[60] As it had just become necessary to renew the

[57] *Coke MSS.* ii. p. 23.

[58] *Strafford Letters*, i. p. 249; Bourchier's father died insane.

[59] S. P. Dom. Cha. I. clxxxv, 14 July 1631. Bourchier had been seeking the lease for himself and Mulgrave, whose daughter Elizabeth he had married (S. P. Dom. Ja. I. xxvii. no. 58; Hunter, *South Yorkshire*, i. p. 205). As her sister Mary had married Ferdinand, Lord Fairfax (*G. E. C.*), he and his son, Sir Thomas Fairfax, ranged themselves with Bourchier and Mulgrave against Wentworth.

[60] P. C. Register, xlii. p. 550.

Council's commission, owing to Sir Arthur Ingram's surrender of the Secretaryship at York to Sir John Melton,[61] the opportunity was taken to revise the Instructions in the hope of settling the relations between the Court at York and the Common Law Courts once for all.

As the procuring of the Commission and Instructions that were issued on the 21st of March 1633[62] was afterwards made a principal charge against Wentworth on the ground that they were new and illegal,[63] they require examination. The Commission, like all the Stuart commissions to the Council, directed the President and Council to hear and determine all offences and misdemeanours, suits, debates, controversies and demands, causes, things and matters whatsoever contained in the annexed Schedule within the specified North parts, in such manner as by the said Schedule was limited and appointed, a new clause, however, being added to enable them to grant quiet possession. So far as the Instructions themselves are concerned the only changes of importance are in Articles 19, 23, 28, and 47. In Article 19 the Council was now directed to deal with offences against the law and good order according to the course of proceedings in the Court of Star Chamber, instead of according to the custom of the Council itself, and it was empowered to deal with falsehoods, frauds, deceits and abuses in the making, shearing, dressing and dyeing of cloths, and in all other trades, mysteries, and occupations, and all other deceits, falsities, crimes, offences, contempts, and misdemeanours punishable in the Court of Star Chamber, whether the same were provided for by any act of Parliament or no, provided that the fines imposed were not less than had been appointed by any such act, and further it was directed to enquire into and punish

[61] Rushworth, ii. p. 160. It was the custom now to renew the Commission and Instructions on the appointment of the President, the Secretary, or one of the legal members.

[62] Pat. 8 Car. I p. 8. m. 16d (28).

[63] Rushworth, *Trial of Strafford*, p. 173 ff.

unlawful and clandestine marriages and marriage contracts obtained by fraud or without the consent of the parents of the parties. Likewise in Article 23 the Council was now directed to hear and determine cases between party and party according to the course of proceeding in the High Court of Chancery, instead of according to its own custom, and was empowered to give relief by way of recovery or demand in debts, demands and securities, and to give it in all cases in which there was no remedy at common law by stay of proceedings in any of the courts of common law, by Injunctions, or otherwise by all ways and means as was used in Chancery. Article 28 was amended, enabling the Council to send its serjeant-at-arms to make arrests in any part of the kingdom without seeking the intervention of the Chancellor; and to Article 47 was added a clause directing that depositions and examinations of witnesses, answers upon oath, and decrees and proceedings in the Court at York should be allowed as evidence in other courts when the parties were dead or beyond the sea, and in such cases as depositions testified or exemplified in the Chancery were allowed.

Hyde afterwards asserted that by these changes in the Instructions a mass of new exorbitant power was crowded in,[64] and without the books of decrees it is now impossible to prove that he was altogether wrong. Yet it is much more likely that the changes were intended only to give effect to precedents established in Elizabeth's days when the Council in the North was really co-ordinate with the Courts of Star Chamber and Chancery within the limits of its jurisdiction. Certainly, the clause concerning depositions before the Court at York merely revived a practice which had not been called in question till 1616; there were precedents too for the stay of proceedings in all the Courts in matters falling within the Council's jurisdiction; and it is possible that there were also Tudor precedents for arrests

[64] Hyde's speech against the Council in April, 1641; Rushworth, iii. pt. 1. p. 230

by the Serjeant-at-arms even South of the Trent.[65] As for the directions to hear, order, and determine cases according to the course of Star Chamber or of Chancery as the case might be, those who, like Coke, girded at the time-honoured Instruction to hear and determine according to discretion, should have welcomed the change; for, under the influence of the common law Chancellors, Ellesmere, Bacon, and Coventry, general rules were being established in these Courts,[66] and precedents were being collected in the '*Choice Cases in Chancery*', the '*Reports in Chancery*', and '*Les Reports del Cases in Camera Stellata*'. Thus, although equity cannot, without ceasing to be equity, become as rigid as the common law, the element of uncertainty in the Council's decisions was reduced to a minimum. On the whole, it must be said that the changes made in 1633 were all justifiable and calculated to increase the usefulness of the Court at York without unduly extending its authority.

Even now the troubles of the Council in the North were not over; for, at the Lammas Assizes in 1633 one of the judges on the northern circuit shought fit not only to set at nought the new Instructions, and that in open court, but also to ignore the commission for compounding with recusants. Ever since Coke's time the judges had refused to recognise the Council as a Court of Record or to allow its acts to be given in evidence, so when some depositions taken before the President and Council were offered as evidence in a *Nisi Prius* at Durham, Mr. Justice Vernon, who was on the bench, rejected them, and when reminded of the Article in the Instructions which ordered such evidence to be accepted, said that 'he knew of no such matter; the Instructions were nothing to him'. He also saw fit to ignore the compositions already made with the

[65] Wentworth claimed that custom warranted Gower's arrest in Holborn (p. 416); and it was on the ground of precedents that the Privy Council found for the Lord President and Council (P. C. Register xlii. p. 452).

[66] Kerly, *op. cit.* Ch. 6.

recusants, and charged the Justices of Peace to execute all the statutes against them, especially that for twelve pence a Sunday, for which many had compounded. In so doing he was only endorsing the policy of the Exchequer, which had sent out warrants to bind to good behaviour all recusants without exception. Wentworth was probably right in ascribing this course, not to zeal for Protestantism, but to a desire to stop the compounding which, in filling the king's coffers, emptied the pockets of the Exchequer officials, who had been used to wring from the recusants quarterly exactions that the statutes should not be enforced. The result was that they had made all the recusants 'ready to run from their compositions, thinking that there is no Faith to be kept with them on this Earth'. The Lord President therefore asked and obtained Vernon's removal from the northern circuit in October 1633.[67]

For some time longer the judges of King's Bench and Common Pleas continued to issue writs of habeas corpus and prohibitions, and to refuse to treat proceedings in the Court at York as evidence.[68] But the determination of the king and his Council to uphold the Council at York and to maintain Wentworth as its President had been made so clear that the Yorkshire gentry at last understood that there was 'neither Wisdom nor Profit to be got by any living under that jurisdiction by contending and opposing the Proceedings of the President and Council at York',[69] and for some years there was peace in the North.

This change may have been partly due to the fact that Wentworth was no longer ruling the North. He had been made Lord President of the Council in order that he might reduce the turbulent North to order again and re-establish

[67] *Strafford Letters*, i. p. 129-30. He was afterwards restored, and in Hampden's case gave judgement for the Crown.

[68] E. g. in Turner v. Askwith, June 1634 (*Coke MSS*, ii. p. 55), and Musgrave v. Vaux, Sept. 1635 (*Ib.* ii. p. 95; Rushworth, ii. pp. 159-60).

[69] Wentworth to his nephew Sir William Savile, 24 Jan. 1638; *Strafford Letters*, ii. p. 147.

the control of the central government over local administration; and his success had marked him out as early as the end of 1631 as the one man to bring back peace and prosperity to the still more turbulent kingdom of Ireland.[70] Appointed Lord Deputy in June 1632,[71] the 'rebels of the North' kept him in Yorkshire till the beginning of July 1633.[72] In the ordinary course, a new Lord President would have been appointed now, and indeed the Earl of Newcastle had been suggested for the office;[73] but for some reason which is not clear, Wentworth was allowed to retain the Presidency and leave his Vice-president, Sir Edward Osborne, to rule the North on his behalf and in his name.[74]

There can be little doubt that it was a mistake to let Wentworth remain Lord President even in name. It is true that under any President the Council in the North must have been unpopular with certain classes, if only because it represented bureaucratic government among a people whose impatience of control was notorious. It is true also that, as Osborne was Lord Fauconberg's son-in-law,[75] the faction that had been keeping the North in a turmoil could not very well call in question his integrity and uprightness as they had Wentworth's. Yet, so long as the Council was associated with Wentworth, even in name, it must be touched by the hatred that his 'Thoroughness' and impatience of opposition had called forth. At the same time, the resentment roused against the Council by Charles I's arbitrary government must pass on to the

[70] S. P. Dom. Cha. I. cciv. no. 72.

[71] Pat. 8 Car. I p. 1. m. 22d.

[72] Rushworth, ii. p. 161.

[73] S. P. Dom. Cha. I. cciv. no. 72.

[74] There was an Elizabethan precedent for this; for Sir Henry Sidney, Lord President of the Council in Wales and the Marches from 1559 to 1586, also held the office of Lord Deputy of Ireland, 1565-67, 1568-71, hid 1575-79, leaving the duties of the former office to be fulfilled by a Vice-president (Skeel, *op. cit.* p. 86).

[75] Thoresby, *op. cit.* p. 2.

Lord President in whose name resistance was punished. So, when at last his enemies brought him to bay they found no better way to destroy him than to identify him with the Council of which he was President and bring them both down in common ruin.

The year after Wentworth went to Ireland was a momentous one in English history; for, the recusancy compositions not bringing in enough money for the navy, Noy advised the King to issue writs for levying ship-money in all the maritime counties.[76] So far as the counties within the jurisdiction of the Council in the North were concerned, they were all maritime, even Westmorland; and the obligation of even the West Riding to contribute to setting forth ships for the royal navy had been settled in Elizabeth's days [77] and confirmed in 1627.[78] Nor could the need for the levy be doubted by those who heard that in July 1635 a Hollander fought with a Dunkirker in Scarborough harbour and carried it off as a prize, paying no heed to remonstrance from the town, although their shot had injured several people on shore.[79] So no resistance was made to the demand for ship-money until 1638, when Hampden's case revived the old controversies. The clothing towns of the West Riding, led as of old by the Saviles,[80] and Whitby Strand, led by Sir Hugh Cholmley, Fauconberg's nephew,[81] refused any longer to contribute. Durham, encouraged doubtless by its Temporal Chancellor, Mr. Justice Hutton, who had found for Hampden, refused to pay, those who were called before the Court at York, bringing suits in the Court of Pleas at Durham.[82] Hitherto

[76] Rushworth, ii. pp. 247, 257.

[77] P. 217-8.

[78] S. P. Dom. Cha. I. Iv. no. 9.

[79] Ib. ccxciii. No. 107; ccxciv. Nos. 46, 52, 55; ccxcv. Nos. 24, 35, 37, 45, 69, 71; ccxcvi. Nos. 1, 2, 52; ccxcvii. No. 2; cccciii. No. 99.

[80] Including Wentworth's own nephew, Sir William Savile, *Strafford Letters*, ii. p. 147.

[81] *Memoirs of Sir Hugh Cholmley*, pp. 60-1.

[82] S. P. Dom. Cha. I. cccxcviii. No. 18.

the Council in the North had been little concerned in the matter as the writs went to the sheriffs who collected the money and made their returns to the Exchequer; but henceforth it was busily engaged in forcing men to pay a tax which they believed to be illegal, and knew to be hateful.

A hundred years earlier, when the Yorkshire men were ever ready to fly to arms in defence of their rights and liberties, such fiscal demands would have set the North in a blaze. But the Council at York had done its work well. So a few went to prison, and many fled to New England;[83] but no country gentleman called his friends and tenants to arms, and no collector of the hated tax was set upon by an angry mob of villagers. It was not that the yeomen of the North would no longer march cheerfully and adventure themselves at the bidding of the gentlemen of quality, their neighbours, for they did so again and again in the years that followed; but they had lost their habit of rioting, and were ignorant of the use of arms. Their leaders, too, were no longer the Eures, Conyers, Bowes, and others of ancient northern name, whose fathers had won fame on many a stricken field in France or on the Scottish Border;[84] their place had been taken by the Saviles, Bellasis, Cholmleys, and Fairfaxes, the descendants of lawyers and merchants, who preferred to fight the battle of liberty in the law-courts and the Parliament-house. But as the judges had given the King the key of the laws with which to open the entrance to absolute power, and there was none to force him to summon a Parliament, there was little fear that he would have to meet other than passive resistance even from his Yorkshire subjects.

Not all who called Charles Stuart King were of the same

[83] Archbishop Neile, writing in Feb. 1639, says: 'I find that too many of your Majesty's subjects inhabiting in these in these parts of Yorkshire are gone into New England' (ib. ccccxii. No. 45).

[84] In 1625 it was noted that for the loan sought in that year some of the most ancient northern names, Eure, Conyers, Bowes, and others, had to be omitted because of their decayed estate (ib. vii. No. 65).

slow temper, however; and on the 5th of June 1639 the Scots, less used to peace and led by nobles whom the Crown had never crushed, encamped on Berwick Law ready to take the old road across the Border. To meet the danger, the trained bands of the northern shires had been called out; but 'there was never so raw, so unskilful, and so unwilling an army brought to fight'.[85] Ill-trained and ill-armed, with never a sword-maker nor any that could mend arms but a tinker in all the north country, and commanded by strangers or persons of inferior rank, their own colonels being all ignorant in the use of arms, the northern men went out slowly and sullenly to meet 'the old enemy'.[86] With such an army Charles could do no other than make peace with the Scots on their own terms; and on the 6th of June he signed the Pacification of Berwick, granting them all they asked. Nevertheless, he had no mind to keep faith with rebels farther than he must; and the Scots, having learnt how deep was the discontent with Stuart rule in England, stubbornly interpreted every disputed clause in their own favour. War was certain; so in September 1639, Wentworth was summoned from Ireland.

At the Lord President's coming the old hatred flared up again. The spirit that had kept the feud alive generation after generation was still strong in the North, and Wentworth's enemies had been merely biding their time to fall upon him and rend him in pieces at the first falter. There were more of them now; for to the Saviles and the Bellasis had been added the Foulis's, father and son, Mulgrave and the Fairfaxes, Sir John Bourchier, and through him the Barringtons, the Cromwells, and the Hampdens. And their number was still growing; for during his stay in Ireland his temper had become more arrogant, his impatience less controlled.[87] So he wantonly brought on himself the hatred

[85] *Cromwell's Army*, p. 13.

[86] *Coke MSS.* ii. p. 189; S. P. Dom. Cha. I. cccix. No. 24; ib. ccccx. No. 55.

[87] For believers in heredity it is interesting to note that through his

of the Vanes, because, when created Earl of Strafford in January 1640, 'he would needs in that patent to have a new creation of a barony, and was made Baron of Raby, a house belonging to Sir Henry Vane, and an honour he made account should belong to him too; which was an act of the most unnecessary provocation (though he contemned the man with a marvellous scorn) that I have known', says Clarendon, 'and I believe was the loss of his head'.[88] Then there was Sir Hugh Cholmley, the son of his old friend Sir Richard it is true but also the cousin of Henry Bellasis, who fell under his displeasure for refusing to pay ship-money, carrying the whole liberty of Whitby Strand after his example, and was put out of all commissions, of the peace, oyer and terminer, deputy-lieutenant, and Colonel of his regiment of militia, as was Sir John Hotham.[89] These were the natural leaders of the party opposed to the arbitrary government of the King and his Councils, and several of them were returned to the Short Parliament that met on 13 April 1640, Henry Bellasis and Sir William Savile for Yorkshire, young Henry Vane for Hull, Sir John Hotham for Beverley, his son and Sir Hugh Cholmley for Scarborough, Sir Ferdinand Fairfax for Boroughbridge. And brief as was the session, they so distinguished themselves that when the Parliament was dissolved three weeks later, Bellasis and Hotham were called before the Council at Strafford's instance and imprisoned for some words they had spoken there.[90]

grandmother, Margaret Gascoigne, Wentworth was the descendant both of Henry IV's Chief Justice, Sir William Gascoigne, and of the 3rd Earl of Northumberland.

[88] Clarendon, *History of the Great Rebellion*, p. 61.

[89] *Memoirs of Sir Hugh Cholmley*, p. 60-6.

[90] Rushworth, ii. pp. 1113, 1167 From S. P. Dom. Cha. I. ccclii. No. 53, we may gather that the words had reference to ship-money which Hotham, High Sheriff of Yorkshire, was making no effort to collect, although he was released in June on agreeing to go to Yorkshire and collect all the ship-money in a month's time (ib. cccvii. No. 36). As a matter of fact, not a penny was collected.

So far no attack had been made on the Council in the North, nor even on the Lord President; but the next few months were to change all that. Charles had summoned the Short Parliament by Strafford's advice to get money for the coming war with the Scots; he dissolved it three weeks after it met because it would grant supplies only if he made peace with the Scots.[91] To raise an army he fell back on the device of issuing commissions of array to the Lords Lieutenants of the southern counties as Elizabeth had done when the northern Earls rebelled in 1569.[92] The command was given to Strafford as Lieutenant-general,[93] and it was on his behalf that in July the Council in the North began to arrange for billeting the men and horses in their way to Newcastle.[94] His enemies were quick to seize the chance of striking at the author of the Petition of Right; and at the assizes at York on the 28th July they led the Yorkshire gentry in drawing up a petition against the billeting, both as an unfair demand on the county which had spent £100,000 the year before and as contrary to the Petition of Right. This petition they sent to the King at Oatlands; but no answer was vouchsafed till the 17th of August, when a letter was sent to the Council in the North denying that last year's expedition had cost so much, and saying that the King was angry that the petition should have been sent to the Secretary, and not through the Lord Lieutenant, to whom they were to go in future before troubling the King.[95]

[91] Rushworth, ii. pp. 1104, 1154-5.

[92] *Ib.* ii. p. 1201. The commissions were issued under a statute of 5 Hen. IV, and followed a copy of the commission of array as then settled by Parliament. Rushworth says that the Attorney-general brought the commission before the King in Council on July 1, 1640; but it was certainly known to the Council before that date, for Wentworth refers to the statute in his speech to the Council in the North on 30 Dec. 1628.

[93] *Ib.* ii. p. 1051. This was not the old Lieutenancy of the 14th, 15th, and 16th centuries. The Earl of Northumberland was Captain-general, and strictly, Strafford was his Lieutenant, not the King's.

[94] 18 July 1640; S. P. Dom. Cha. I. cccclx. No. 40.

[95] Ib. cccclxi. No. 38; ib. cccclxiv. No. 17.

Nothing daunted by this rebuff, Bellasis and the rest returned to the charge just a week later, when the Scots had crossed the Tweed (20 Aug.), and the northern trained bands as well as the feudal levies had been called out to repel the invaders. On the 24th of August they waited on the king at his Manor House at York with a petition that they should not be 'debarred of the immediate Petitions to your most sacred person, in matters wherein the public good and safety of this county shall be interested', and declared that the 'Trained Bands could not be drawn to Raise and March without fourteen days' pay from your majesty before they move'.[96] This late echo of the Cumbrian dalesmen's reminder to Edward I that their free service began and ended at the county boundary, and that if they were needed elsewhere they must be paid for beforehand, was a warning that even Charles and Strafford could not ignore. So the studied insult to the Lord Lieutenant, whom the petitioners had again ignored, was passed over, and as soon as the news that the Scots were nearing Newcastle reached Charles, he called the gentry of Yorkshire then at York to wait upon him. When they had gathered together, Strafford, in the King's presence, made them a speech in which he told them of the advance of the Scots, and asserted that though some of his countrymen, who would fain seem to the world to know much of the law (but indeed were ignorant, and knew nothing they should), were loth to advance at their own charges, they were bound by the common law of England, by the law of nature, and by the law of reason, to attend his majesty at their own proper costs and charges in case of invasion ; adding, 'In a word, Gentlemen, if you will be close-fisted and not open your purses, nor attend the King's person, you must be content to lose all ; but if you will be free and liberal you will save all'. Then he related how in '88 the trained bands of the county were raised from 6,000 to 12,000 men with a promise that, when the danger was over, they should be reduced

[96] Rushworth, ii. pp. 1227, 1229-31.

to the former number. This had never been done; but now he would be humble suitor to his Majesty that after this war was over, they should be reduced to the former number, or at least by 4,000. Charles granted the suit on the spot, and Strafford set off for Newcastle, satisfied that the trained bands would now be prepared to march. But it was too late, for the army had that very day been defeated at Newburn, and was then in full retreat to Durham and Yorkshire.[97]

Not the most factious of Strafford's enemies could protest now when he received a commission of array for Yorkshire on the 31st of August; and when the King called the Yorkshire gentry together (10 Sept.), and suggested that they should pay the trained bands to remain under arms for two months, pending the meeting of the Great Council of the Peers at York (24 Sept.) and the settlement of terms with the Scots, they could only agree, adding, nevertheless, a petition that his Majesty should think of summoning a Parliament, 'the only way to confirm a peace betwixt both kingdoms'. This answer they desired Strafford to present to the King, 'which he inclined to do, leaving out those words in the Petition of Advice to the King to call a Parliament for that he knew it was the King's full purpose to do; but the Yorkshire Gentlemen's Hearts and the Voice of the Kingdom being Fervent for a Parliament, were unwilling to leave out those words of Summoning a Parliament, therefore they delivered their answer themselves, which was well taken by his majesty'.[98]

Strafford had held his foes long at bay, but they had beaten him at last. A Committee of the Peers most hostile to the Court, among whom was his enemy Lord Savile, negotiated with the Scots at Ripon (25 Oct.) a cessation of arms that left the invaders encamped on English soil till the Lords and Commons, having settled their accounts with the King and his ministers, of whom Strafford was

[97] *Ib.* ii. pp. 1234-40.
[98] *Ib.* ii. pp. 1254, 1264-5.

the chief, and having transferred the sovereignty of England from the Crown to Parliament, should be pleased to buy their departure. Thus, it was under the protection of a foreign army that the Long Parliament met on November 3, 1640. All the Lord President's enemies were there, ready to present their petitions of grievances and to join in his impeachment when the time came; but Strafford, knowing that his life as well as his life's work was at stake, remained in Yorkshire to discipline the army which he saw so clearly the King would need ere long. But Charles had learned to lean on him, and, promising him safety, summoned him to London. There seemed to be time enough to prepare articles accusing his enemies of treasonable dealings with the Scots and the French; but on a sudden motion (11 Nov.) by Pym that he had something of importance to labour for the House, the outer room was cleared of strangers, and the door locked. By four o'clock in the afternoon articles had been discussed, accusing the Earl of Strafford of high treason in his government as Lord President of the Council in the North and as Lord Deputy of Ireland. Then Pym, followed by a crowd of members, went to the Lords to lay his accusation before them, and to ask that Strafford should be imprisoned for a few days while the articles of accusation were being drawn up. A few minutes later Strafford arrived, only to be greeted with cries of "Withdraw! Withdraw!" That might he lay in the Tower and the Council in the North was once more without a Lord President.[99]

[99] *Ib.* ii. pp. 1276, 1306; iii. pp. 1, 10, 21, 42-3.

CHAPTER III.

The Fall of The Council in the North.

In impeaching Strafford the Commons were impeaching, not a man, but a system. To the vast majority of the governing classes in England in 1640 Strafford was 'the very symbol and impersonation of all that the realm had for many long years suffered under'. They had no conception of the forces of inefficiency, disorder, malice, and self-seeking that he had had to contend against both as Lord President of the North and as Lord Deputy in Ireland; and to them his name 'stood for lawless exactions, arbitrary courts, the free quartering of troops, and the standing menace of a papist enemy from the other side of St. George's Channel'. Only the humbler folk knew what he had done for them, and they had no voice in Parliament. Men like Hampden and Cromwell saw in him only the man in whom 'all those sinister ideas, methods, and aims which it was the business of their lives to overthrow, were gathered up'.[1] They could not foresee the day when Cromwell himself would have to plead that 'if nothing should be done but what is according to law, the throat of the nation may be cut while we send for some one to make a law'.[2]

Not all of those who cried-up righteousness and justice and liberty were really moved by a great love of liberty or a high sense of justice. The country squires and city merchants who controlled Parliament hated the Court of Star Chamber and the Council in the North, not because they set men in a pillory and cut off their ears, ordered them to be flogged and ruined them with crushing fines

[1] Morley, *Oliver Cromwell*, p. 88.

[2] *Letters and Speeches of Oliver Cromwell*, Speech V, 17 Sept. 1656.

— at every Quarter Sessions they themselves passed like sentences on labourers and vagrants, Quakers, Anabaptists, and Romanists — but because those courts inflicted these punishments on members of their own class, men who held their own religious or political opinions. To many of them, the execution of the laws against fraud and deceit in trade was as hateful as the execution of the laws against non-conformity in religion, the levying of the poor-rate as oppressive as the levying of ship-money, and insistance on even-handed justice and honest administration as tyrannical as denial of freedom of speech. To these men it was no defence to plead that Strafford's rule in the North had not been a lawless despotism. It was enough for them that under his Presidency the Council in the North had held the Justices of Peace and other officers to strict account, and had insisted on the due execution of the laws in the interests of the people as well as of the Crown.

Account must also be taken of the common lawyers, of whom there were many in the Long Parliament, who hated the Lord President and Council in the North because they drew to York the civil cases which they fondly hoped would be brought to Westminster if the northern court were done away with. These had long denounced the Council's Commission and Instructions as illegal, and they had a special grievance against Strafford in that he had resisted their efforts to hamper the Council more firmly and more successfully than any of his predecessors.

Strafford's foes were quick to seize the chance that fate had given them. Taking little less care to ruin him than to save their own souls, they were ready to rack heaven and hell to do him mischief.[3] Their task, however, was easy. His personality was known to but few of his countrymen outside Yorkshire, and there his stern rule had made him many enemies and left him few friends; whereas Savile,

[3] Wentworth to Radcliffe, 5 Nov. 1640; *Life and Letters of Sir G. Radcliffe*, p. 218.

Vane, Bellasis,[4] and Bourchier, his most subtle and determined enemies, were well-known to the Parliamentary leaders, whose principles and aims were believed to be their own. Nothing was easier for those who had so long waited for revenge than to confirm the Commons in their belief that Strafford was a public enemy and his continued existence a public danger. They had, however, learnt their lesson, and though 'they had much to say about the illegality of the Court over which he presided, and of its incompatibility with the ordinary legal system of the country, they had no charge to bring of personal injustice, except so far as masterful dealing with those who resisted his own authority and the king's might count for injustice'.[5] They sought, in fact, to conceal private rancour under a show of public zeal, and to destroy the Lord President by making common cause with those who would destroy the Council in the North and the whole system of prerogative courts of which it was a part. So when the detailed Articles against Strafford were voted on 30 January 1641, the first one charged him with procuring for the Council in the North the Commission and Instructions of 1633 which conferred on it new illegal powers, Articles 19, 23, 28, and 47 being summarized in proof of the charge, and asserted that in August 1633 the Lord President, with the intention of terrifying the Justices of Peace from executing the laws, had publicly declared that the king's little finger was heavier than the loins of the law.[6]

Neither charge will bear examination. The Commission and Instructions of 1633 were not new in the sense implied, that is to say, in differing largely from earlier Commissions and Instructions including those given to Strafford in

[4] Sir Henry Vane the younger was one of the members for Hull; Henry Bellasis was junior member for Yorkshire, Lord Fairfax being the senior.

[5] Gardiner, *op. cit.* vii. p. 228.

[6] Rushworth, *Trial of Strafford*, p. 149 ff.; cf. *A Perfect Journall of the Daily Proceedings and Transactions in that memorable Parliament begun at Westminster 3 Nov. 1640*, ii. p. 120 ff.

1628 and 1629, if those were illegal, so were these. Strafford's accusers, however, could not afford to assert that the Commission and Instructions of 1628 were illegal, for they were identical with those given to Sheffield in 1609, and the legality of these could not well be called in question by a faction which looked to the Earl of Mulgrave as one of its leaders. But if political necessity forced Strafford's accusers to draw a distinction between the Commission and Instructions of 1633 and those of 1609, we are free to note that the distinction was unreal, that the former commission was neither more nor less illegal than the latter, and that if it was treason for Strafford to procure the one it was equally treason for Mulgrave to procure the other.

So far as the second charge is concerned, we note at once that the date assigned to Strafford's speech is wrong by a whole year. That the mistake was deliberate is as clear as its motive. Strafford's accusers had been obliged to give the procuring of the Commission and Instructions in March 1633 as his first treasonable act, but he had never presided over the Council under that Commission,[7] and they were hard put to it to prove any illegal act against him as Lord President. By twisting round his remark that the little finger of the law was heavier than the loins of the King, and assigning it to August 1633 instead of to the true date, August 1632, they were able to put in irrelevant evidence likely to prejudice the Court against the accused, and to bring forward as witnesses against him Sir David Foulis and Sir Thomas Layton, two of the men who had suffered most from his inflexibility.[8] The charge, however, was both irrelevant and baseless, and we need only note in passing the amazing effrontery of the suggestion that Strafford wished to terrify the Justices of Peace from executing the laws, coming as it did from men who knew very well that it was just to compel them and others like them to execute the law duly and impartially that Wentworth

[7] Rushworth, *Trial* etc. p. 147.

[8] *Ib.*; *J. H. L.* iv. pp. 129, 148, 155, 179, 186, 25.

had been made Lord President of the Council in the North.

Worthless as they were, Strafford had little difficulty in refuting the charges brought against him as Lord President of the North; and Pym and Hampden were soon forced to focus attention on a charge of advising the King to bring in the Irish army, a charge resting only on the evidence of Sir Henry Vane who skilfully suggested, without actually saying, that the Lord Lieutenant had proposed to use the army, not against the Scots, but to overawe Parliament. The Lords, however, showed an exasperating partiality for justice as well as the law, and it appeared that acquittal was probable. Thereupon the 'inflexible party' in the Commons, led by Strafford's personal foes, decided that as the law would not enable them to destroy the man they feared as much as they hated him, they would make law to suit themselves. The impeachment was stopped, and in its stead was brought in a Bill of Attainder for death without trial. In the Commons only fifty-nine 'Straffordians' were just enough and brave enough to vote against the attainder, but it was still doubtful how it would be treated by the Lords. Charles spared no effort to win over Strafford's enemies in the Upper House, even appointing as Lord President of the Council in the North Lord Savile,[9] whom a passionate hope of the presidentship of the North no less than his bitter hatred of the Earl of Strafford made applicable to any end.[10] Soon Essex was almost alone among his peers in thinking that 'Stone dead hath no fellow'; and exile might have taken the place of the death penalty but for the disclosure of the Army Plot. Since Strafford's arrest, opinion in the North had been changing as week after week went by and still the counties beyond the Trent had to maintain the army which Parliament would not disband because it could not do so without paying off and disbanding the Scots army too, and by March the army at York was so far out of hand as to lend itsef to at plot

[9] Drake, p. 370.

[10] Clarendon, *Hist. of Reb.* p. 62.

for marching on London, releasing Strafford, and dissolving Parliament. The plot, however, was revealed to the Parliamentary leaders by Goring out of pique, and at the critical moment Pym made his knowledge public (May 5). The effect was immediate and dramatic. Business was stopped in the City, and day by day the apprentices streamed out to Westminster to threaten the lives of the 'Straffordians'. Overawed by the mob and themselves alarmed by the Army Plot, the Lords on Saturday, May 8, by a majority of five passed both the Bill of Attainder and a Bill providing that that Parliament should not be dissolved without its own consent. It remained only to extort the King's assent. All night long the mob surged round Whitehall, and with the dawn came fresh crowds to swell the throng. At nine o'clock on the Sunday evening Charles gave way. Three days later Strafford was beheaded on Tower Hill.

During the week that elapsed between the disclosure of the Army Plot and Strafford's execution, reform had passed into revolution, and in the weeks that followed it became clear that the fifty-nine 'Straffordians' represented no inconsiderable part of the people of England. But before the rift widened into an irreparable breach the Long Parliament had accomplished all the enduring part of its work. Parliamentary government was established by an act providing for triennial parliaments; unparliamentary taxation was abolished by acts declaring ship-money illegal, reserving to Parliament the levying of customs, determining the extent of the royal forests, limiting the right of purveyance, and abolishing distraint of knighthood; and the prerogative courts were destroyed by acts abolishing the Courts of Star Chamber and of High Commission.[11] These last acts, in extinguishing the judicial power of the Privy Council, deprived it of administrative sovereignty, and when they received the royal assent on 5 July 1641, the whole Tudor system in State and Church passed away.

When the Privy Council fell, the Council in the North

[11] *J. H. C.* ii. p. 57a.

could not stand, and *pari passu* with the proceedings against Strafford and with the bills against the Courts of Star Chamber and High Commission, had gone on an inquiry into the legality of the Councils in the North and in the Marches of Wales. The Committee appointed for the purpose on 23 December 1640 included the knights and burgesses of the Northern counties, Wales, and the Four Shires, with all the lawyers of the House and fifteen other members, Edward Hyde, afterwards Earl of Clarendon, being chairman. Its meetings were irregular,[12] and it was not until 24 April 1641 that Hyde was able to report to the House. He then proposed three Resolutions, which were at once adopted : '(1) that the Commission and Instructions whereby the President and Council in the North exercise a jurisdiction is illegal both in the Creation and Execution ; (2) that the Court of the President and Council in the North is unprofitable to his Majesty ; and (3) is inconvenient and grievous to his Majesty's subjects in those Parts'.[13] Two days later he set forth the reasons for these resolutions at a conference on the subject that the Lords had sought with the Commons.[14] The speech [15] caused a great sensation, and indeed made Hyde's reputation ; but its skill was equalled only by its lack of candour.

The basis of the argument was found in Coke's report of the decision given by the judges in Trinity Term 1609,[16] much of which Hyde quoted verbatim, supplemented by the First Article against Strafford and by information supplied, as it seems, by Lord Fairfax's son-in-law, Sir Thomas Widdrington, Recorder of York. Nothing could surpass the skill with which Hyde suggested, without proving, that the Commission and Instructions of 1633 were entirely new and illegal. Refusing to read the Instruc-

[12] Clarendon MSS. Nos. 1475, 1535.

[13] *J. H. C.* ii. p. 127a.

[14] *J. H. L.* iv[1] p. 226.

[15] Printed in *Parl. Hist.* ii. p. 766 ; and in Rushworth, iii. pt. 1. p. 230.

[16] Coke, *Rep.* xii. p. 50 ff.

tions of 1609, which would have proved that the Articles to which exception was taken were not really new, he asserted that the clause in the Commission giving authority for establishing possessions 'crowded in a mass of new exorbitant and intolerable power', and summarized the 9th Article, directing the Council to charge the people to obey the laws and ordinances established by the King, the Privy Council, the Ecclesiastical Commissioners, or Parliament touching religion or divine service, in such a way as to imply that the Council was charged to enforce all ordinances of the Privy Council in all matters, civil and criminal as well as ecclesiastical. Then he read the 19th, 22nd, 23rd, 24th, 29th, and 30th Articles, and airily dismissed the rest of the fifty-eight Articles as either illegal or beside the law, implying that all of them dealt with jurisdiction, whereas only eighteen did so, even remotely, the others only regulating the constitution of the court, payment of members, fees, etc. Having thus created in the minds of his hearers a prejudice against the Court, which he deepened by implying that it was a needless expense to his Majesty, who paid £1300 a year for it, the members pocketing the fees and fines, while the officers preyed and committed rapines on the people, Hyde came at last to the real grievances against the Council; its competition with the Courts at Westminster, and its summary procedure. 'Whether his Majesty', he said, 'may cantonize out a part of his kingdom to be tried by commission, though according to the rules of law, since the whole kingdom is under the laws and government of the courts established at Westminster, and by this reason the several parts of the kingdom may be deprived of that privilege, will not be now the question; that his Majesty cannot by commission erect a new Court of Chancery, or a proceeding according to the rules of the Star Chamber, is most clear to all who have read the Magna Carta, which allowed no proceedings, *nisi per legale judicium parium et per legem terrae*', From which it is clear that the question whether the King could

by commission create courts to proceed according to the common law had been raised in committee, and had probably been decided in favour of the Crown, a fact that the Westminster lawyers were anxious to obscure. The rest of this speech was chiefly a plea for 'the vexed worn people of the North', subject to a Court which interpreted its liberty to proceed by discretion 'as if discretion were only removed from rage and fury ; no inconvenience, no mischief, no disgrace, that the malice, or insolence, or curiosity of these Commissioners had a mind to bring upon that people, but through the latitude and power of this discretion, the poor people have felt. This discretion hath been the quicksand which hath swallowed up their property, their liberty : I beseech your Lordships rescue them from this discretion'. Then, after reciting the resolutions of the House of Commons, Hyde concluded thus : 'And therefore they (i. e. the good northern people) are humble suitors to your Lordships and the House of Commons, on this behalf, that since this people do and have in all matters of duty and affection contend with the best of his Majesty's subjects, that they may not be distinguished from them in the manner of his Majesty's justice and protection, since this Court, originally instituted and continued by his Majesty for the ease and benefit of his subjects , is apparently inverted to the burden and discomfort of them, that your Lordships will join with the House of Commons in beseeching his Majesty that the present Commission may be revoked and no more such granted for the future'.

The Lords, having lately had good experience of the methods of the Commons in matters of law and justice, were in no hurry to accept their view that the Commission and Instructions whereby the President and Council in the North exercised a jurisdiction, were illegal both in creation and execution, unprofitable to his Majesty, and inconvenient and grievous to the subjects in the North parts. Even in the matter of the Council's criminal and police jurisdiction the Lords were slow to accept the view

of the Commons, and it was not without amendment that they agreed to the bills for abolishing the Courts of High Commission and of Star Chamber, in the second of which is was enacted: (1) that the Star Chamber jurisdiction exercised in the Court before the President and Council established in the Northern parts as in the Council in the Marches of Wales, the Duchy Court, and the Exchequer Court of Chester, should from 1 August 1641 be revoked, and that no Court having the same jurisdiction should ever be established; (2) that neither his Majesty nor his Privy Council have or ought to have any jurisdiction, power or authority by English bill, petition, articles, libel, or any other arbitrary way whatsoever, to examine or draw into question, determine or dispose of the lands, tenements, hereditaments, goods or chattels of any of the subjects of this kingdom, but that the same ought to be tried and determined in the ordinary Courts of Justice and by the ordinary course of law'.[17]

The first of these clauses quite definitely abolished the Star Chamber jurisdiction of the Council in the North; but the second, although it in effect abolished the Court of Requests, did not assert that the King could not by commission erect a new court of equity, and the Council's equitable jurisdiction was left untouched. As a matter of fact the Lords were in grave doubt both as to the illegality of the Court at York and as to the wisdom of abolishing it. After hearing Hyde they had deferred action on the Commons' resolutions till May 29 when they heard counsel, and after a long and full hearing ordered that the King's Counsel should be heard in open house concerning the legality of the Court at York upon Thursday, the 10th day of June 1641, and that in the interim the Council of York should attend the King's Attorney-general to let him know how far they desired the King's Counsel should insist upon the point touching the legality of that Court. Accordingly, on June 10, two days after the Lords had

[17] Printed in Gardiner, *Constitutional Documents*, p. 106-113.

agreed to the bill for abolishing the Court of Star Chamber, Counsel for the Court at York were heard at large concerning its legality, and it was ordered that on the following Saturday the King's Attorney-general should speak concerning the king's power in regulating a well-ordered Court of Equity. The final debate and judgment, however, were deferred while the bills for abolishing the Courts of High Commission and Star Chamber were being considered and passed; and it was not until after they had received the royal assent on July 5 that consideration of the legality of the Council's equitable jurisdiction was resumed on July 13. Then the House went into Committee for freer debate, and on resuming, all the Commons' resolutions were approved, the first two, declaring the Court at York illegal and unprofitable, by a majority, the third, declaring it inconvenient and grievous to the subjects, without a division, as was a fourth resolution that the Lords should join with the Commons in beseeching his Majesty that the present Commission and Instructions might be revoked, and no more such granted for the future. Even in passing these resolutions, however, the Lords seem to have doubted their wisdom, for they added to them a memorandum that the judges of the court at York should not be liable to punishment unless for corruption, that their judgments should not be liable to question but in case of injustice, and that if it appeared that there was a necessity for the ease of that country to have a Court, the House would advise with the Commons how one might be established by law; and they appointed seven of their number, among them Savile, the new Lord President of the Council in the North, to confer with the Commons on these points.[18]

Even Coke had admitted in his *Fourth Institute*, which had been published for the first time while these matters were being debated, that 'in respect of some continuance it (i.e. the Council in the North) hath had, and many decrees made, it were worthy of the wisdom of Parliament for some

[18] *J. H. L.* iv. pp. 261, 271, 299, 311.

establishment to be had therein'.[19] The common lawyers, however, who controlled the House of Commons, because it was their interest to abolish the Court at York, would not hear of regulating it. So, although the Lords desired and obtained a second conference of the Houses on the matter on August 28,[20] nothing came of it. Instead, the Commons, in their Grand Remonstrance of the state of the kingdom presented to Charles on December 1, 1641, repeating what good they had done for the people, and what Courts they had taken away, 'reckoned the Court of the President and Council in the North with the Courts of Star Chamber and High Commission, calling them 'so many forges of misery, oppression and violence', and claiming that by their taking away 'men are more secured in their persons, liberties and estates, than they could be by any law or example for the regulation of those Courts or terror of the Judges'[21].

This was not the opinion of the subjects north of the Trent. Long ago Wentworth had said, 'However much some may desire a dissolution of this court, yet I persuade myself as soon as the number, the heat of small suits carried far remote at great charges were multiplied amonst them, they would confess their ancestors to have been much wiser who petitioned, gave a subsidy for erecting the Provincial Courts, than themselves who are now so much for taking them away'.[22] It was, indeed, all very well for rich men like Henry Bellasis, Sir John Hotham, and Sir Hugh Cholmley, who had suffered at the hands of the Lord President and Council in the North in connection with ship-money and so forth, to be 'most active and solicitous to dispatch the Bill for taking away the Court of York';[23] but to poor men who had ever found there relief

[19] *Fourth Institute*, p. 246.
[20] *J. H. L.* iv. p. 381.
[21] Gardiner, *Const. Doc.* p. 146
[22] 30 Dec. 1629.
[23] Clarendon, i. p. 238.

against the oppression of great men as well as the speedy and easy administration of justice at little cost[24], the dissolution of the Council was pure loss, and there can be little doubt that it had no small share in rallying Yorkshire, and especially York, to the King's cause. As early as May 7 Hyde had been warned that the abolition of the Court at York would be the utter ruin of that city ;[25] and when Charles came to York in August 1641 on his way to Scotland he was petitioned by the Mayor and Aldermen on behalf of the Council in the North, and others of the county petitioned him to the same effect when he again reached York on his way south in November. So strong was the feeling, indeed, that when the King again went north in March 1642 to deal with the situation created by Sir John Hotham's seizure of Hull in January, he thought it worth while to refer to these petitions in answering one presented to him by the Yorkshire nobility and gentry assembled at the York Assizes that he should be reconciled with his Great Council. 'And first let me tell you', he said, 'that as yet I know no legal dissolution of it (i. e. the court at York), for hitherto formally there has nothing come to me, either directly or indirectly, for the taking it away. Therefore I may say, it is rather shaken in pieces than dissolved. Now my desire is, in compliance to what I answered last year unto the several petitions delivered to me on this subject, that you would consult and agree among yourselves in what manner you would have the court established most to your own contentments, and to the good of all these northern parts, in such a legal way as that it may not justly be excepted against, and I assure you, on the word of an honest man, that you shall not blame me, if you have not full satisfaction in it'.[26] Once shaken in pieces, however, not all the king's horses nor all the king's men could put the Council in the North together again. Civil

[24] Widdrington, *Analecta Ebor.*, Egerton MSS. 2572 f. 57 ff.

[25] Clarendon MSS. No. 1528.

[26] Drake, p. 142-3

war was already in sight; and from August 1, 1641, the Council in the North ceased to exist.

Nevertheless, what the King could not do might be done by Parliament, and as soon as Charles's execution established, as it seemed, the supremacy of Parliament, the Grand Juries of York and Yorkshire, being met at the Assizes there on 19 March 1649, drew up a petition for the establishment of a Court at York which was presented in July through General Fairfax, who wrote a letter in support of the petition. Both were read in the Parliament Chamber on 6 July, when the petition was referred to a committee including Sir Thomas Widdrington and Sir Henry Vane as well as all the lawyers in the House.[27] How the Committee reported we do not know; but by this time even the common lawyers had been constrained to confess that it might be possible that some few men might by such Courts be saved some labour, charges, or trouble, for once or a little while, as their particular cases or conveniences, neighbourhood, or conditions of adversaries might happen.[28] As a matter of fact, the very number of suitors resorting to them showed that the 'arbitrary' courts had met a real need, and now that they had been done away with, there arose a very general demand for the establishment of County Courts with a civil jurisdiction practically identical with that of the Council in the North. In spite of the lawyers, Parliament had to take account of the petitions addressed to it, and proposals for the establishment of County Courts were still under discussion when Cromwell turned the Rump out of doors, 20 April 1653.[29]

The Little Parliament summoned by Cromwell's council of officers to meet on the 4th of July took up its predecessor's work with a will. Unfortunately, its zeal outran its dis-

[27] *J.H.C.* vi. p. 251.

[28] Thomas Heath, *Considerations touching the dissolving or taking away the Court of Chancery*, p. 58.

[29] *Original Letters and Papers of State addressed to Oliver Cromwell*, ed. J. Nicholls, jr., p. 105-6.

cretion, and of the projects of law reform inherited from the Long Parliament, it made nonsense. The Court of Chancery was abolished, and it was proposed that there should be established in each county a County Court exercising the whole jurisdiction of the Courts at Westminster, which should remain as County Courts for London and Middlesex and as Courts of Appeal for the rest of the country. Even the equitable jurisdiction of Chancery was to be given to the new County Courts. This would mean that every case at common law would be one in equity, and would render the equitable side of these courts so superior to the legal as to take away its power ; 'for the judge will have a double power and capacity to take which hand he will have, and to judge according to this or that circumstance which he will like best'.[30] So at least the common lawyers held, and they were up in arms at once against the new projects and against the Assembly that put them forward. When the Convention proceeded to irritate and alarm the army, the clergy, and the holders of property, as well as the lawyers, its doom was sealed. Sunday, Dec. 11, was passed in concocting devices for bringing the Assembly to a close ; and on Monday, the intriguers, meeting at an early hour, voted the resignation of the powers of Parliament into the hands of the Lord-general.[31]

Not thus easily were the lawyers to win the day. The Grand Juries at the Assizes held at York in March 1654 returned to the charge, and on behalf of themselves and of the Nobility, Justices, Gentry and Freeholders, with the other inhabitants of the county of York, addressed a petition to the Lord Protector, praying, among other things, 'that Courts of Judicature may be settled in this great county, it having been under consideration, and a great progress therein made formerly in Parliament, upon the petitions of the people in these parts, for the preventing of excessive expenses, and other inconveniences in law-suits,

[30] cc. 7, 9.

[31] Morley, *op. cit.* pp. 380-3.

occasioned by the remoteness of this county from the city of London; that some way may with all convenience be directed and settled for probates of wills within this county; and that these courts may be without unnecessary appeals to London'. Another petition to Parliament prayed, 'that the law may be so regulated as to be short, plain, and with as small cost and delays as may be, without the superfluities of officers and places; that differences may be legally ended in every county, and trivial businesses referred to peace-masters, nominated and empowered for that end, in their several divisions; that there may be some way of relief for poor tenants, who groan under the insupportable burden of cruel customs, and slavish exactions in lordships and manors; that the life of a man be not taken away for theft, but that a most strict course may be taken for the severe punishment of such offenders as is most agreeable to the word of God'. About the same time also the churches in Norfolk and Norwich prayed the Lord Protector, 'that the three nations may enjoy the blessing of a godly upright magistracy, for the encouragement of well-doers, defence of the poor and oppressed, and restraint of all vicious and inordinate practices, and that all good provision may be made for the ease of the people, (1) by having courts of judicature in their own county to prevent those tedious, long and expensive journeys for obtaining their proper rights; (2) by authorizing a sufficient number of honest men, of known fidelity and uprightness in every county, to have a full power to hear and determine all matters of debts and differences between parties, not exceeding the true value of forty pounds, whereby the vexatious suits for trespasses and other trivial matters may be ended, without the daily improverishing of so many thousands in the nation'.[32]

These petitions, more modest in their proposals than the Little Parliament, remind us forcibly both of the Instructions to the Council in the North and of the arguments advanced

[32] *Original Letters to Oliver Cromwell*, pp. 105-6, 130, 147.

on its behalf by James I in 1609.[33] The Yorkshire petition in particular must have brought a sardonic smile to the lips of Wentworth's shade if so be it lingered in the Guildhall at York where the Lord President had addressed the assembled nobility, justices and gentry in 1628. It was, indeed, the best justification both of the policy of the Crown in establishing the Court at York and of the Instructions by which its proceedings had been regulated, as well as the most scathing condemnation of the faction that had overthrown the Council in the North. It must, therefore, have been galling in the extreme to Lord Commissioner Widdrington to be once more put on a Parliamentary Committee with Lambert and twenty-nine others and all the lawyers of the House in December 1654 'to consider touching a Court of Justice to be erected at York for the Five Northern Counties; and how the Probate of Wills and granting administration and Recovery of Legacies may be settled throughout all England and Wales'.[34] The Northern Counties, however, were still doomed to disappointment. Even before the Committee for the Court at York was formed, Cromwell had had to purge a Parliament that insisted in questioning the 'Fundamentals', and in January 1656 it was dissolved with no business done.

Still, the ground had been so far cleared by long discussion that when the Second Protectorate Parliament met in September 1656,[35] nothing remained but to introduce a' Bill for the erecting of a Court of Law and a Court of Equity at the City of York for the County of York, the City of York and County of the City of York, the Town and County of Kingston upon Hull, the County of Northumberland, the Town and County of Newcastle-upon-Tyne, the Town of Berwick-upon-Tweed, the County of Cumberland, City of Carlisle, and County of Westmorland', which was read the first time on November 3, and a second

[33] S. P. Dom. Jas. I. xxxvii. No. 35.

[34] *J. H. C.* vii. p. 400.

[35] Widdrington was Speaker in this Parliament; Drake, p. 231.

time on November 20 when it was referred to a Committee including the Northern members.[36] What the provisions of the Bill were we do not know, save that the Court was to be guided by the course of the Common Pleas, a detail learnt from the Parliamentary Diary of Thomas Burton, M.P. for Appleby and a member of the Committee.[37] Burton also gives us some side-lights on the relations, not always friendly, of the Northern members with one another and with other members of the House,[38] but unfortunately, he gives no details of the discussions on the Bill. These were interrupted for a time by the debate on the case of James Nayler, the Quaker, a native of Wakefield, a circumstance that drew from the member of Southwark the remark that 'those that come out of the North are the greatest pests of the nation'.[39] Not until March 1657 was the Committee ready to report, and then the House was absorbed in the reconstruction of the constitution which was embodied in 'the Humble Petition and Advice' (March 31). Neither the Journal of the House of Commons nor Burton's Diary contains any reference to the reception of the report nor any notice of the third reading.[40] There is, however, some ground for believing that the Bill was rejected. For in a debate on 28 April, 1657, on the Report of the 'Committee for revising the ordinances, etc. that have been made, not according to the fundamental laws and rights of the people', it having been proposed that the ordinance for the approbation of preachers should be limited in time, as it was very inconvenient to draw men up from the remotest parts of the nation, Mr. Secretary Thurloe objected to this ordinance being singled out, saying, 'As to the inconveniences

[36] *J. H. C.* vii. pp. 449, 450, 452, 456.

[37] Burton, *Parl. Diary*, i. p. 17.

[38] E. g. pp. 19, 155, 207, 341.

[39] *Ib.* i. pp. 53, 155.

[40] On 3 March 1657 it was ordered that the report should be made on 10 March, but there is no record of this being done; *J. H. C.* vii. pp. 493, 501.

of men coming thither, the same argument may as strongly be urged as to bringing down laws into every county, which will not be allowed'.[41] Certain it is that no Act for erecting a Court of Law and a Court of Equity at York for the Five Northern Counties was ever entered in the Statute Book; and perhaps it is not without significance that there is no record of another petition for the erection of a Court at York while the Commonwealth lasted.

With the Restoration the hopes of those who sought the re-erection of the Council in the North rose again, and several petitions to this effect were addressed to Charles II by the gentlemen assembled at quarter sessions and assizes. Among them was one signed by the several Grand Juries for the northern counties for 'the re-establishing of the Court as much conducing to the ease, benefit and security of the North parts'. This petition was not only referred, but recommended, by the Privy Council to the House of Commons then sitting. A committee was appointed to consider and report, who reported that the Court at York was only suspended, the resolution against it never having been embodied in a bill and sanctioned by the three estates. Legally sound though it was, the decision did nothing to further the cause of the petitioners. It is true that it implicitly confirmed to the Crown the power of erecting a Court of Equity by commission; but the King and Council were afraid to stir in the matter, and 'Lord Chancellor Clarendon would by no means promote it, having himself been a great stickler against it'.[42]

More success attended a petition presented to the King by the Mayor and citizens of York in the following year, praying that, in as much as the Court was not taken away but only suspended, he should 'appoint a president and court, that they (i.e. the petitioners) may be restored to their former ease and plenty, and the peace and safety of the country provided for by the wonted care of the

[41] Burton. ii. p. 51-2.

[42] Drake, pp. 237 ff.

presidents, that, as formerly, justice may flow down like a stream from your Majesty, the fountain of justice, upon the heads of your petitioners'.[43] Events were even then happening which gave a sinister significance to this petition, with its reference to the peace and safety of the country to be provided for by the wonted care of the presidents. For the Yorkshire Plot for the seizure of York was already on foot, and at the end of July the government received warning that all the Cromwellians were ready in Yorkshire and the four Northern counties to be up in a few days, that the Quakers, who were specially strong in the West Riding clothing towns, were engaged to a man, and that they were boasting of great things and that Fairfax would lead them.[44] It was but a wild business, however, formidable only through the presence of disbanded officers and soldiers among the plotters; and the arrest of a hundred of the leaders in August ruined the design. Still, the danger was real enough to lead the Council to consider seriously the restoration of the Council in the North with as full power as of old. Had it been merely a question of erecting a court of equity, the government, according to the decision of 1662, needed only to issue a commission under the Great Seal; but the public good seemed to require the setting up of a court having the Star Chamber jurisdiction taken from the Council in the North by statute in 1641, and for this the assistance of Parliament was needed, so a short Bill was introduced in the session of 1664 for establishing the Court at York again.[45]

The Bill is summarized thus by Drake in his *Eboracum*:[46]

[43] *Ib.* The date is fixed from the fact that the petition was signed on behalf of the City by Henry Anderson, who was Mayor in 1663, *ib.* p. 366.

[44] *Cal. S. P. Dom. Cha. II.* 1663-4, p. 216 ff, 298.

[45] Drake does not give the date of the introduction of the Bill, to which there is no reference in the Journals of the House of Commons; but the considerations given above lead to the conclusion that it was introduced in 1664 to meet the situation created by the Yorkshire Plot.

[46] Drake, App. p. xxxvi.

'The Bill is for the establishing of a Court at York. The inducement is, that Henry VIII in the 31st year of his reign did erect a Court there, extending through the county of York, the city and county of York, the town and county of Kingston-upon-Hull, the Bishopric of Durham, the county of Northumberland, the town and county of Newcastle-upon-Tyne, the city of Carlisle, the town of Berwick-upon-Tweed and the liberties there, and the counties of Cumberland and Westmorland, which being found commodious for the people of those parts, was confirmed and continued by Edward VI, Queen Mary, Queen Elizabeth, King James, and King Charles I, until by the troubles in this nation it was discontinued. And in respect of the distance from Westminster, the subjects of those parts cannot without great charge and expense repair thither, but must either quit their interests, or else redeem them at excessive loss and charge. Therefore, the bill desires it may be enacted that it shall be in his Majesty's power, by his Commission under the Great Seal of England, to erect a court there, and to nominate such persons for judicial and ministerial charges to act according to such powers as by certain annexed Instructions are declared'. From Drake's summary of the Instructions, it appears that the court thus to be established was identical in composition with the old Council in the North when sitting as a judicial body, with the same criminal and civil jurisdiction, save that the amount for which the court might decree debts for rents was raised from £40 to £100 ; and with the same procedure, the vexed question of Injunctions being resolved by an Instruction that decrees were to be final, unless either party within fourteen days appealed to the Chancery, before which appeal the appellant must give security to prosecute his appeal, and to pay the other party's costs, and to perform the decree if confirmed in Chancery.

So confident were the Ministers that the Bill would be passed that the Duke of Buckingham, who, as Lord Lieutenant of the West Riding, had distinguished himself in sup-

pressing the Yorkshire Plot,[47] was appointed President of the Council at York.[48] For some reason or other, however, — possibly through Clarendon's influence, probably through a natural hesitation to revive Star Chamber jurisdiction — the Bill was dropped. No further effort was made to restore the Council in the North, which therefore disappeared from history.

That disappearance was much to be regretted. It is true that its criminal and police jurisdiction was now hardly needed as the Justices of the Peace were quietly assuming, with the approval of the Judges, the power of summary conviction of which the Council had once had a monopoly; but that its supervision of the Justices of Peace as administrative officials was still necessary, is abundantly proved both by the decline in the reputation of English manufactures after the collapse of Charles I's personal government, and by the rise of the various evils connected with poverty and unemployment which called for so much special legislation from 1662 onwards.[49] To the wage-earner and to the poor especially, the disappearance of the Council in the North was pure loss. The assessment of wages by the Justices of Peace did indeed continue in Yorkshire long after it had died out elsewhere, but there was none to watch that the assessment was fair and none to enforce the laws for the relief of the poor. Even of the West Riding, where clothweaving - still a domestic industry - made the position of the labourers unusually good in the eighteenth

[47] *Cal. S. P. Dom. Cha. II, 1663-4,* pp. 293, 295; *ib. 1664-5,* pp. 40, 42. His commission as Lord Lieutenant is enrolled on Pat. 14 Car. II. p. 18d.

[48] Before Feb. 1665, when Major William Gower's petition for the office of Serjeant-at-arms at York was referred to the Duke of Buckingham as President of the Council at York; *Cal. S. P. Dom. Cha. II. 1664-5,* pp. 199, 285.

[49] Cunningham, *op. cit.* ii. pp. 310-2, 566 ff. There is in Meredith's *Economic History of England,* p. 181-199, an admirable summary of the situation arising from the breakdown of the Tudor and Stuart machinery or controlling local administration.

century, it was true that, as Fielding said of London, 'All will allow that the poor are now ill-provided for and worse governed . . . their sufferings are less observed than their misdeeds . . . they starve and freeze and rot among themselves, but they beg and steal and rob among their betters'. Not till the Reform Act of 1832 took from the landed gentry and the close corporations their monopoly of political power was there an attempt to interfere in local administration; and when reform was at last taken in hand five central Boards[50] and a host of local commissioners had to be created to do the work that had formerly been done with reasonable efficiency by the Council of State and the Councils in the North and in the Marches of Wales, each in its own district.

It was, however, as a court of law and equity that the Council in the North was most needed. Its disappearance indeed permitted a centralisation of justice highly profitable to the judges and the lawyers but productive of many evils. For the Justices of Peace had no civil jurisdiction, and suitors were left with no choice but to pursue their causes either in the costly and dilatory courts at Westminster, or in the local court of the liberty, the manor, the hundred, or the borough, from which there was now no appeal. In short, the triumph of the common lawyers established a judicial system which, at least in the North, amounted to an absolute denial of justice to poor men, and to many not accounted poor it made the recovery of a small debt a piece of extravagance in which only the obstinate or the vindictive were likely to indulge.

As a matter of fact, the need for local courts with a simple and summary procedure for small causes was too real and too great not to find its own remedy. With the extinction of the Council in the North, the seigneurial courts beyond the Trent received a new lease of life. As late as the beginning of the nineteenth century these courts were regularly prac-

[50] Board of Trade, Board of Works, Local Government Board, Board of Agriculture, Board of Education.

tised in, suitors resorting to them not only in causes arising out of the custom of the manor or barony, but also for personal actions and debts.[51] They were, however, for the most part hampered by a limited jurisdiction and an antiquated procedure, and during the eighteenth century attempts were made to supplement them by the creation by statute of petty 'Courts of Requests' before which, without trial by jury, debts might be recovered. Still, these courts were few and far between, at least north of the Trent; and even in 1833 the Commission appointed to inquire into the practice and proceedings of the Courts of Common Law found that the barony courts, especially in Northumberland, and still more, the courts of the great liberties such as the Honor of Pontefract, which included half the West Riding, and the Manor of Wakefield, which included no fewer than 375 towns and villages, among them Halifax, Wakefield and Dewsbury, were still holding their own, as they continued to do till modern County Courts were erected in 1846 to do for every county in England what the Council in the North had once done for the five northern shires.

To some it may seem mere bathos that the Council which for more than a hundred years had held sovereign sway over the land beyond the Trent, in the King's name doing justice on the mightiest and giving equity to the poorest, should at the last be regretted as a court for the recovery of small debts. Yet could there be offered any surer or worthier testimony to the greatness of the work it had accomplished? When Henry VIII, following the example of Richard III and his own father, had established as the supreme executive authority north of the Trent the Council of royal officials that managed the lands wrested from the over-mighty subjects to whose will even the King

[51] *Fifth Report of the Commission appointed to enquire into the Practice and Proceedings of the Courts of Common Law, 1833*; *Returns of Hundred Courts in 1839*; *Returns relating to Courts of Requests, Courts of Conscience, and Courts having jurisdiction in personal actions*, 1840.

had had to bow, the North was still the most turbulent part of England, the stronghold of feudalism, the storm-centre of politics; when the Council fell, the forces were already at work which were to transform the pastoral North into industrial England, and the land beyond the Trent had been reduced to such order that there was not an armourer, nor even a swordmaker, in the whole country. So well, indeed, had the Council done its work that the vast powers that had made it only just strong enough to keep the North under the control of the Tudors, were no longer necessary. National unity was now secure, and a new age with new needs had begun, in which self-government seemed more desirable than good government. There might still be a place for a Court at York for the good and speedy determination of justice between party and party, but there was none for a royal Council established for the good government of the people and subjects of the North parts.

APPENDIX I.

ON AUTHORITIES.

I. MANUSCRIPT SOURCES.

The history of the Council in the North falls into two parts — the first from 1472 to 1509, when the Council, although its existence is not to be doubted, is entirely subordinate to the King's Lieutenant in the North whom it presumably advises; the second from 1525 to 1641, when the Lieutenant has disappeared and the Lord President and Council are supreme. It will, therefore, be convenient to adopt the same division in dealing with the sources on which the foregoing account is based.

I. *The Period 1472—1509.* Every student of English history in the fifteenth century has to submit to the very serious limitation imposed by the circumstance that the stores of material in the Record Office are practically inaccessible for want of calendars. Even the *Patent Rolls*, the only important class dealt with as yet, are not calendared beyond 1485 *, Gairdner's '*Letters and Papers illustrative of the Reigns of Richard III and Henry VII*' yields only the Regulations for the Council of the North transcribed from Harl. 433 f. 260. Campbell's '*Materials for the Reign of Henry VII*', drawn from charters, privy seals, patent rolls, close rolls, etc. provides more material, but stops at 1490. Therefore, for this period it has been essential to consult the original documents. Investigation of these, however, has, of necessity, been limited to a few sections which seemed likely to yield some results: — the *Patent Rolls*, the *Privy Seals*, and the *Proceedings in the Court of Star Chamber*. Except the last, these yielded less than was hoped for, and the treatment of this period must have been even more inadequate than it is, had it not been for the invaluable *House Books of the City of York*, supplemented by the *Plumpton Correspondence*, the documents printed in de Fonblanque's *Annals of the House of Percy*, some references in *The Restoration of Edward IV*, Hall's *Chronicle*, and Dugdale's *Baronia Anglica*.

II. *The Period 1525—1641.* For this period the material is far more accessible as well as more copious. In addition to the catalogues of the collections of manuscripts in the British Museum, the Bodleian, and the Lambeth Palace Libraries, we have the calendars of private collections published by the Historical Manuscripts Commissioners; and the Record Office has provided us with *Calendars of the Domestic and Foreign State Papers* for the years 1547—1642, as well as the great *Letters and Papers*

*) Since this was written Henry VII's Patent Rolls have been calendared.

of Henry VIII. Many of these Calendars, however, are Calendars only in name, being in fact little more than catalogues, so that recourse must constantly be had to the documents themselves. Even in the true Calendars the documents relating to the Council in the North, since they are as a rule of little value for general history, have, with rare exceptions, been calendared so briefly as to make it absolutely necessary to consult the originals. This book, therefore, is based very largely on unpublished material, and in the following pages the references are always to the original documents, unless the contrary is stated.

The sources directly relating to the Council in the North in this period fall into four classes: (1) Commissions; (2) Instructions; (3) Records of Proceedings, Orders and Decrees; (4) Letters to and from the Lord President and Council.

(1) *Commissions.* — Of all the Commissions given to the Council the most important was the one that empowered it to inquire concerning all riots and breaches of the peace, and to hear and determine causes between parties, either according to the common law or according to discretion. We know from various sources that such commissions were issued for the better government of the North from at least 1484 to 1509, and continuously from 1525 to 1641; but the earliest extant was issued to Tunstall, Bishop of Durham, in 1530, and is now among the Privy Seals of Henry VIII at the Record Office (Privy Seals H. VIII Ser. II. No. 630). The next that we have was issued to the Bishop of Llandaff in April 1540, and this was entered on the Patent Rolls (Pat. 31 H. VIII p. 6. m. 13) probably because the Justices of Assize for the Northern Circuit were then for the first time included in the Council. Henceforth, the Tudors treated the Commission as a standing one, continuing in *suo robore* throughout a reign and requiring renewal only at the beginning of a new reign (Pat. 1 Ed. VI p. 4; 1 Mary p. 1; 1 Eliz. p. 4), or when changes were made in the Council's powers and jurisdiction as in Jan. 1561 (Pat. 3 Eliz. p. 11), in Nov. 1582 (Calig. C. iii. 583; S. P. Dom. Add. Eliz. xxvii. No. 128), and in Aug. 1599 (Pat. 41 Eliz. p. 17). Only for a short time at the beginning of Elizabeth's reign was the Commission renewed on a change of membership, as in April 1561 when Sir Thomas Wharton was removed from the Commission and Sir George Bowes was admitted (Calig. B. ix. 158), in May 1564 when Archbishop Young was made Lord President (Pat. 6 Eliz. p. 4), and in March 1570 after the rebellion of the Earls (S. P. Dom. Add. Eliz. xviiii. No. 10). As a rule, a letter under the Signet was held to be enough to admit a new member, even if he were the Lord President himself; and as a matter of fact the Commission was not renewed from 21 Nov. 1582 to 10 Aug. 1599 (S.P. Dom. Eliz. cclxxi. No. 145), the names of the councillors admitted from time to time being simply noted in the copy kept in the Secretary of State's office, e. g. in Aug. 1589 when Robert Beale and Ralph Rokeby were made joint Secretaries to the Council in the North (S. P. Dom. Add. Eliz. xxvii. No. 128).

The Commission issued in 1570 has a special importance because till then the form of the Commission remained the same as in 1540, save for the elimination of the words *ad pacem* after *justiciarios nostros*. In 1570, however, the Council was directed to proceed against offenders as well by virtue of the Commission as according to certain Instructions already issued, which were to be held as if they had been inserted in the Commission word for word. This remained the form till 1609 when the great contest between the Council and the Courts at Westminster led to the Commission being shortened by substituting for the detailed enumeration of the Council's powers a reference to the Instructions which were henceforth annexed to the Commission as a schedule and enrolled with it. At the same time the greater importance of the Council's judicial work led to the regular renewal of the Commission whenever a new legal member was appointed. So, under the Stuarts we have a considerable number of issues of the Commission all entered in unbroken series on the Patent Rolls.

So far as the other Commissions directed to the Council are concerned, — Oyer and Terminer, Gaol Delivery, Ecclesiastical Causes, and so forth, — they are to be found with the other Commissions of the same character issued at the same time to various persons south of the Trent.

(2) *Instructions.* — The Commissions by themselves, while telling us much of the Council's powers, tell us but little of its organisation and less of its procedure; for most of our information on these matters we must turn to the Instructions issued from time to time. These were not enrolled in Chancery till the seventeenth century, and the earlier ones must be sought among the State Papers.

The earliest set of Instructions that we have is the 'Regulations for the Council of the North' issued by Richard III for the *Earl of Lincoln* in 1484, a draft of which is entered in a Register of Grants and Privy Seals of the reigns of Edward V and Richard III, now in the British Museum (Harl. 4333). From 1484 we pass to January 1537 when the Instructions given to the Duke of Richmond in 1525 and to Tunstall in 1530 (none of them now forthcoming) were revised for the *Duke of Norfolk* when going north as the King's Lieutenant beyond the Trent. What remains of these Instructions is a badly mutilated draft, now in the British Museum (Titus F. iii. 94), altered for the *Bishop of Durham*, the President of the King's Council in the North under Richmond and Northumberland, who remained as first Lord President of the Council in the North when Norfolk was recalled in October 1537.

The first complete set of Instructions that we have was given to the second Lord President, *Robert Holgate, Bishop of Llandaff*, in June 1538. A copy of these with the alterations needed to fit them for Lord Russell when he was made Lord President of the Council in the West in 1539 remains in the Record Office (L. & P. xiii. No. 1269), as does a copy of the revised Instructions given to Holgate when he became Archbishop of York in 1545 (L. & P. xv. pt. 1. No. 116). This copy has added to it notes

of members who have died or been admitted since it was made, which notes were probably made for the re-issue of the Commission at Edward's VI's accession.

So far it is easy to identify the different copies of Instructions and to assign them to their proper dates, although they are themselves undated. It is otherwise with the remaining copies of Instructions to sixteenth century Presidents. Undated as they are, it is only by careful collation and with the help of some relevant documents, among them a very valuable list of attendances at the General Sessions of the Council from 23 April 1537 to February 1597 (Harl .1088), that identification is possible at all. The difficulties of the task have been enhanced through some of the copies being in the British Museum while others are in the Record Office.

There are extant six copies of Instructions issued to the *Earl of Shrewsbury ;* — (A) S. P. Dom. Add. Ed. VI. iii. No. 47 ; (B) = Harl. 4990. f. 124 ; (C) = Border Papers, i. No. 63 ; (D) = ib. i. No. 64 ; (E) = ib. iii. No. 427 ; (F) = ib. iv. No. 584. These at once fall into two groups, one, including A and B, in which the pronoun referring to the sovereign is 'his', the other, including the remaining copies, in which the pronoun is 'her'. Obviously, the first group belongs to the reign of Edward VI, the second to the reigns of his sisters. We may therefore deal with them separately in attempting to determine the relation of the several copies to one another and thereby the dates to which they must be assigned.

A is described in the Calendar (p. 400) as a 'Book of 30 written and 2 blank pages, imperfect, draft'. It has probably been called 'imperfect' because the writing goes down to the bottom of the last page in a way that suggests more to follow. But B stops at the same place, and the Articles that appear in all the copies of the second group but in neither A nor B relate, as we shall see, to changes which Sir Thomas Gargrave tells us were first made in 1556 at his suggestion (Border Papers, iii. No. 424) ; so we are probably justified in believing that A is not imperfect. Nor is it a draft. This copy originally belonged to Thomas Eynns, Secretary to the Council in the North from 1550 to 1578, whose name is on the parchment cover and in whose hand the Instructions are written. There are, indeed, erasures which give it the appearance of a draft ; but on examination it becomes clear that except a few verbal changes made in a hand closely resembling Sir Thomas Gargrave's, all the alterations were made by Eynns himself. Now, it was not at York but at Westminster that the Instructions were drawn up, and the Secretary at York could do no more than suggest modifications to improve the execution of the Commission. Certainly, he could not venture to suggest a change in the policy in religion and so forth that the Council was to enforce. Yet it is just such a change that the alterations in A effect. In 1538 and 1545 the Council had been directed, whenever they had any notable assembly before them, to charge the people 'to conform themselves in all things to the observation of such laws, ordinances and determinations as be or shall be made, passed and agreed upon by his

Grace's Parliament and Clergy, especially the laws touching the abolishing of the usurped and pretended power of the Bishop of Rome, whose abuses they shall so beat into their heads by continuous inculcation as they may smell the same and perceive that they declare it with their hearts, and not with their tongues only for a form And likewise they shall declare the order and determination taken and agreed for the abrogation of such vain holidays', etc. Now, in the Instructions from which Eynns made his copy in the first instance the words 'and Clergy, especially' were omitted, and in their place appeared 'and the most godly service set forth in their mother tongue, for their comforts; and likewise the laws touching', etc. the rest being as in Holgate's Instructions. Afterwards Eynns crossed out all the words after 'set forth', so that an Article entirely significant of the policy of the men who issued the first Book of Common Prayer, became equally significant of the policy of Queen Mary who made it her first business to abolish the Prayer Book and to restore the authority of the Bishop of Rome. Again, in 1538 and 1545 the Council had been directed 'from time to time to make diligent inquisition who hath taken in and enclosed any commons called intakes, who be extreme in taking gressoms and overing of rents, and to call the parties that have so used themselves evil therein before them, and leaving all respects and affections apart they shall take such order for the redress of the enormities used in the same, as the poor people be not oppressed but that they may live after their sorts and qualities'. As Eynns wrote this Article in the first instance the words 'who hath taken . . . rents', were replaced by 'of the wrongful taking in and enclosing of commons and other grounds, and who be extreme therein, and in taxing and exacting of unreasonable fines and gressoms, and overing or raising of rents', the rest being unchanged. Then the second hand, supposed to be Gargrave's, crossed out all from 'and who be extreme' down to 'before them', and inserted instead 'contrary to the laws'. The limitation of the Council's jurisdiction to the *wrongful* taking in and enclosing of commons and other grounds was all that the opponents of the Tudor policy concerning enclosures could achieve before the legislation of 1549-50 received the royal assent; but it was a matter of course that when next the Instructions were issued the Council's jurisdiction should be restricted to enclosures 'contrary to the laws'. Changes so significant and so far reaching, no Secretary at York, no Councillor even, could have ventured to suggest. It is, therefore, most likely that instead of a draft, we have in A a copy of the Instructions given to Shrewsbury in February 1550 when first appointed Lord President, made for his own use by Eynns who then became Secretary, and afterwards kept up to date by the insertion of the changes made in 1553 when Mary became Queen. These changes make A identical with B, a copy made by Mr. Powell in the seventeenth century. It may be that B was made directly from a fair copy of the Instructions of 1553, but the facts that in B as in A the sovereign is referred to as 'he', and that in B as in A the Instructions are described as to 'Francis, Earl of Salop'

makes it not unlikely that B was copied from A after it had found its way into the State Paper Office.

It is not only in the pronoun that the second group of Instructions differs from the first. All the copies belonging to it agree in differing from all the earlier Instructions and in resembling all later ones by containing eight new Articles by which the Council is directed, among other things, to make such process against disobedient persons as is used in Chancery, fine and imprison for misdemeanours, supervise the Justices of Peace and punish all negligent officers, and an Attorney is appointed to prosecute for the Crown all breakers of the peace. As Gargrave, writing to Cecil in September 1560, stated that these changes were made at his suggestion about two years before Mary's death, 1556 is the earliest possible date for any of the copies C, D, E, F. None of them, however, was made at that date; for all include as one of the Councillors Thomas, Earl of Northumberland, i.e. Sir Thomas Percy's son who was restored to his uncle's title and lands 30 April 1557, while none of them includes Ralph Rokeby, who attended the Council in the North from 20 July 1555 to July 1556 (Harl. 1088), being discharged from service as a serjeant-at-law on 16 May 1556 so that he might devote himself to his duties as a judge and commissioner in the North (Foss, v. p. 14). On examination C proves to be the earliest of the four. It is a copy made by a clerk who left blank spaces in which the names of the Councillors were to be inserted. These were afterwards inserted in a second hand, and then Cecil made a few changes. Very significant is his insertion of the words 'lords or' before 'Parliament' in the Article concerning religion quoted above ; but more important for our purpose is his alteration of the Article appointing the Attorney in the North. As copied by the clerk the Article ran, 'And her Majesty's pleasure is that the said Lord President by the advice of two of the Council at the least being bound to continual attendance shall name and appoint such mete person as they shall think mete to be her Majesty's Attorney during such time as the Lord President and Council shall think meet to call and present' etc. Cecil underlined all from 'the said Lord President' to 'to call and prosecute', and wrote at the side 'to be appointed by the Queen', and over 'the said Lord President' etc. 'William Woodrowe shall be her grace's Attorney to call'. Now, Gargrave, in the letter already referred to, wrote that when the Attorney was first appointed about two years before Queen Mary's death, the Lord President got his own servant Thomas Sutton appointed attorney, who held office two years. 'In the last Instructions William Wooderoffe was appointed, being sick at the time he sent a deputy who served 2 sittings, then Wooderoffe died'. Now, Wooderoffe's will was proved 8 May 1559 (North Country Wills, ii. p. 14), so the two sittings attended by his deputy must have been those beginning 5 December 1558 and 13 February 1558-9 respectively (Harl. 1088). C therefore must be a draft of the Instructions given to Shrewsbury when his commission was renewed in December 1558 (Pat. 1 Eliz. p. 4) on Elizabeth's accession, the basis of the draft being

copied exactly from the revised Instructions given to him in 1556. This draft, or more probably a fair copy of it that was sent to York, was the original from which the same clerk made the copies D, E, F, which are identical with it even to the names of the Councillors. D contains additions in Eynns's hand, all referring to matters well within his province concerning the organisation and procedure of the Council; at the beginning of E Gargrave has written, 'A true copy without additions', and at the beginning of F, 'These Instructions is with additions', these being in his own hand; All three copies have been used by Cecil as drafts for the Instructions which he was engaged, in Nov. 1560, in revising with the help of Eynns, Gargrave and the Attorney-general for Shrewsbury's successor, the Earl of Rutland. To sum up: — A (S. P. Dom. Add. Ed. VI iii. No. 47) is a copy of Shrewsbury's Instructions in February 1550 into which the owner, the Secretary in the North, inserted the changes made in the Instructions in 1553; of this, B (Harl. 4990 f. 124) is a late copy. The basis of C (Border Papers, i. No. 63) is a copy of the Instructions of 1556; as it stands, it is the draft of the Instructions of December 1558, of which E (Border Papers, iii. No. 427) is a fair copy, and D (Border Papers, i. No. 64) and F (ib. iv. No. 584) are copies that were used by Eynns and Gargrave respectively as the bases of drafts of the Instructions given to the Earl of Rutland in January 1561.

Of the *Earl of Rutland's* Instructions we have a fair copy in Border Papers, iv. No. 583. The names of the Councillors, however, differ slightly from those given in Rutland's Commission (Ib. iv. No. 582). Henry, Earl of Westmorland, who died in 1563, is named in the Commission but not in the Instructions; Lord Dacre and Lord Grey de Wilton are replaced in the Instructions by Henry, Lord Scrope, and Francis, Earl of Bedford, who replaced them as Wardens of the West and East Marches respectively, the one in April 1563, the other in Feb. 1564; Sir Thomas Wharton, Robert Mennell, and Francis Frobisher are named in the Commission but not in the Instructions; and William Whittingham, appointed Dean of Durham in 1563, is named in the Instructions but not in the Commission. As Border Papers, iv. No. 583 is described as a fair copy of Rutland's Instructions made and signed by John Ferne, Secretary to the Council 1595—1609, it is most likely that the original was a copy of Rutland's Instructions into which had been inserted as they were made the changes made in the Council during his Presidency.

The fair copy of the Instructions given on 4 June 1564 to *Thomas Young*, Archbishop of York, is in Titus F. iii. f. 158; but the reissue of 1 June 1566 mentioned in S.P. Dom. Add. Eliz. xxi. No. 90 is not now forthcoming; probably because the copy that remained with the Secretary of State had to be hastily altered and given to the *Earl of Sussex* in September 1568. Several changes had to be made in the Instructions, and it was not till 3 Nov. 1568 that they received their final form as preserved in Titus F. iii. 147, which is a copy made and signed by Sir Thomas Smith for Huntingdon's use in November 1572 (ib. 145).

The *Earl of Huntingdon* had at first only an abstract of Instructions dated 22 October 1572 (S. P. Dom. Add. Eliz. xxi. No. 90), in which he was referred to the Instructions of 4 June 1564, 1 June 1566, and 3 November 1568; but in November 1572 he received the above-mentioned copy of Sussex's Instructions. This he used till May 1574 when a new set of Instructions was given to him of which several copies remain — Titus F. iii. 140; S. P. Dom. Add. Eliz. xxiii. No. 59; Harl. 7035 f. 193; ib. 4990 f. 131, — the first being a draft, the second a contemporary fair copy, and the third and fourth late copies. Certain additions were made to the Instructions in November 1579, when a Serjeant of the Mace was first appointed, which are found in the Egerton MSS. 2790 f. 30; but the Instructions as a whole were not renewed till July 1582. A copy of these remains in S. P. Dom. Add. Eliz. xxvii. No. 128 (i) which is distinguished only by the names of the Councillors from a re-issue of 22 August 1589 (Calig. C. iii. 584; Titus F. xiii. 260; *Hist. Mss. Com. Rep.* iii. App. p. 297,) when Robert Beale and Ralph Rokeby were made Joint Secretaries and William Cardinall was made a Councillor of Fee.

The abbreviated Instructions given to *Matthew Hutton*, Archbishop of York, as Head of the Council, on 26 Feb. 1595-6 are printed in full in *The Egerton Papers*, (Camd. Soc.) p. 210.

Of the Instructions given to *Lord Burghley* on 3 August 1599, we have the draft of a new Preamble and some additional Instructions in S. P. Dom. Eliz. cclxii. No. 7, and an Abstract and Comparison of the whole with the Instructions for the Lord President and Council in Wales and the Marches in 1607, in Titus F. iii. 130. Also, the particulars in which they differed from the old Instructions are carefully noted in our copy of the Instructions given to *Lord Sheffield*, 22 July 1603, S. P. Dom. Ja. I ii. No. 74. The Instructions given to the same President, 21 June 1609, are on the Patent Rolls, (7 Jac. I. p. 2 m. 27 d.), as are all the Instructions issued thenceforth. It was now the custom to renew the Commission and Instructions every time a new Councillor of Fee in ordinary was admitted, so re-issues were frequent, especially for *Lord Scrope* (Pat. 17 Jac. I p. 11; 1 Car. I p. 9 d. No. 11; 3 Car. I. p. 25. No. 15; 4 Car. I p. 28. Nos. 28, 29).

The re-issues for *Lord Wentworth* (Pat. 4 Car. I. p. 3. m. 1; 5 Car. I p. 18. No. 9; p. 17. No. 8; 8 Car. I. p. 8. m. 16d.; 13 Car. I. p. 31. No. 19) were made the opportunity for amending the Instructions, and as these amendments were afterwards made the basis of a serious charge against him at his trial, the Instructions containing them have been printed in Rymer.

(3) *Records of Proceedings, Orders and Decrees.* — Of these we have but the scantiest remains, although many volumes must have been needed to contain the thousands of decrees and orders given by the Council in the North. Tradition has it that the Council's papers were kept in St. Mary's Tower outside the walls of York, and perished when the Tower was destroyed during the siege of 1644. It is possible that the tradition is true to fact so

far as the depositions and so forth are concerned, but there is some reason to doubt its truth in respect of the books of decrees. These must have been constantly in use by the Court, and there seems no good reason why they should have been kept in the Tower along with the evidences of the dissolved monasteries which were stored there, rather than in the Manor House itself, which was certainly large enough to afford storing room for them. If any volumes were to be kept elsewhere than in the building where the Court met, they would almost certainly be the earlier ones; yet we know that the earlier volumes were extant when Sir Thomas Widdrington, Recorder of York, 1638—74, compiled his *Analecta Eboracensia* (Egerton MSS. 2578), which was largely used by Drake in preparing his *Eboracum*.

Writing of the Council in the North (f. 576 ff.) Widdrington says 'And it appears by the first book of decrees there of 29 H. 8., 30 H. 8., and 31 H. 8., that the sittings were holden 4 tymes in the year. And that they exercised jurisdiction for establishing of possessions of lands, punishment of extortions, and other misdemeanours, And held pleas of debt, trespas, Actions upon the case, etc., and allso suits in equity.' These words convey the impression that the first book of decrees, or rather one that had been begun for entering the decrees given in a sitting on 25 April 29 H. 8. before Norfolk as the King's Lieutenant, was still extant to be referred to in confirmation of Sir Thomas's assertion. Of course, this might be an odd volume that had escaped destruction; but against this we must set the facts that (1) in November 1560 (Border Papers, iii. No. 428) Cecil made a note that the books of the Acts of the Council of the Duke of Richmond's time should be 'recovered of the Salops', which was probably never done; and (2) Sir Christopher Hilliard, a member of the Council at its dissolution, who published in 1664 a List of the Mayors of York (Harl. 6115), gave to one John Cooper a manuscript volume (Harl. 1088) in Sir Thomas Widdrington's hand, containing a *List of the attendances of the members of the Council in the North* from 23 April 29 H. 8 (1537) to Feb. 39 Eliz. (1597). The compiler began by giving a list of the members present at each meeting; but he got tired of this and began to shorten his labours by simply giving the place and date of the meeting and adding 'the Lord Lieutenant and the Council'. Then, after Tunstall became Lord President, he gave the place and date of the beginning of the session, and a list of the members present. He afterwards went back to the shorter fashion, returning to the longer one, however, for the meeting of 27 Feb. 33 H. 8. Thenceforth, he always gave the place and date of the beginning of each session and the names of those present; finally, for the session beginning at York 24 Feb. 4 Ed. VI (1550) he gave, not only the members present at the beginning, but also the members present at the last meeting, and this remained his practice until he reached the end. Obviously this is not a mere copy of a book of attendances. Moreover, there are interspersed among the lists copies of a Proclamation (f. 11), an Order (f. 18b), an agreement (f. 22), a decree from *'libro Decret impe El. Rne Anno xix Regne pro lxvii'* (f. 28b), and

the oath to be taken by the Examiners of Witnesses (f. 30); It therefore seems reasonable to conclude that the list was compiled from the books of decrees themselves, and that as the compiler went on he copied certain things that struck him as being interesting. If so, Sir Thomas must have been able to refer, not to one book of decrees but to a whole series of them, and that, some years after the siege of 1644. It is possible, therefore, that one or more volumes of decrees may yet come to light.

Until then, we must content ourselves with such information concerning the Council's proceedings as can be obtained from certain scattered sources. The most important is the *Corporation Records of York and Hull*, of which free use has been made in the following pages. Next in importance are the *Proceedings in Star Chamber and in Chancery* preserved in the Record Office, and the *Law Reports*, most of which have been printed, though some of the most valuable for the purpose in hand are still in manuscript in the *Harleian* and *Lansdowne Collections* at the British Museum. Adding a few references in the *Yorkshire Quarter Sessions Records* and the *Privy Council Registers*, we practically exhaust the material available under this head.

(4) *Letters to and from the Lord President and the Council, Warrants and Grants, etc.* — Under this head comes by far the largest amount of material for the history of the Council in the North. They are to be found chiefly in the following collections:

(a) *The State Papers* in the Public Record Office which have been calendared: (i) the *Letters and Papers of Henry VIII*; (ii) the *State Papers, Domestic*, for the reigns of Edward VI, Mary, Elizabeth, James I, and Charles I, with the '*Addenda*' for the first four reigns; (iii) the *State Papers, Foreign*, for the reigns of Edward VI, Mary, and Elizabeth, among which are calendared many documents now in the volumes of *Border Papers* for Elizabeth's reign; (iv) the *Scottish Papers*; (v) the *Border Papers*; and the *Privy Council Registers*, which have been printed *in extenso* down to 1603.

(b) The Letters and Papers in the British Museum, are scattered through several collections, the most important being the Lansdowne and Harleian Collections, which contain a very large number of Lord Burghley's papers. (i) In the *Lansdowne Collection* are a few letters belonging to Archbishop Young's Presidency (Lans. 6, 10), and to the Earl of Sussex's (Lans. 12, 26, 29); but the greatest number belong to the Earl of Huntingdon's (Lans. 14, 16-20, 25, 27-31, 33-6, 38, 43-4, 47, 51, 53-5, 61, 67-8, 75-6, 78-9, 89, 102-3, 110, 119, 138, 982-3) There are also several volumes containing a number of Hutton's letters, etc., most of which have been printed in Strype's *Annals*, or in the *Correspondence of Archbishop Hutton* (Lans. 17, 27, 70-80, 82-4, 86, 983); and then a few miscellaneous documents of some value in Lans. 143, 147, 161. Bishop Kennet's Collections in Lans. 979—80 are sometimes useful; and in Lans. 1076 is the only report I have seen of the Information brought by the Attorneys of King's Bench

and Common Pleas against the Council in the North in 1608. (ii) The *Harleian Collection* has a large number of Huntingdon's letters in Nos. 6991-9; but it is most valuable for the miscellaneous information gathered from Nos. 36, 39, 48 f. 190, 68, 89, 91, 368, 433, 442, 543, 589, 610, 793, 1074, 1088, 1171, 1418, 1470-1, 1576, 1926, 2138, 4990, 6037, 6115, 6387, 6808, 6811, 6991—9, 7035, 7042. (iii) The *Cotton Collection* does not contain very many letters, but it includes several copies of the Instructions, and contains a number of important documents in the following numbers: Calig. B. ii, v, ix; C. iii, v, vi; D. ii; Titus, A. xxvi; B. i; F. iii, iv, xviii, xiv; Vitellius C. i. (iv) In the *Additional Manuscripts* must be mentioned 12507 f. 227, 14030, 30262. E. 2, 30305, 32091 f. 242, and 34324 f. 8-26b. It should, however, be noted that the Council in the North whose Correspondence is collected in *Addit.MSS.* 32091, 32647-8, 32654, and 32657, and printed in the *Hamilton Papers* is not the King's Council in the North, but the Council that was assigned to every Lieutenant-general in the North engaged in war against Scotland; e. g. to Shrewsbury in 1522 (*L. & P.* iii. No. 2500), to Suffolk in 1543 (*ib.*xviii. pt. 1. No. 105), and to Norfolk in 1559-60 (*For. Cal. 1559-60*, p. 237). The two Councils were quite distinct, even though they had members in common; and although there are in the collection a few letters from the King's Council, the general description is most misleading. (v) *Egerton MSS.* 2578, 2790 f. 30; (vi) *Hargrave MSS.* 483 f. 6; and (vii) *Stowe MSS.* 156 No. 4; complete the list of manuscripts in the British Museum which relate to the Council in the North.

(c) *Private Collections.* — Taking these according to the chronological order of the documents in them, we note that the *Tanner MSS* at the Bodleian contain a few of Holgate's letters, most of which have been transcribed by Miss Sellar and printed in the *English Historical Review.* The greater number of the Earl of Shrewsbury's letters are among the *Talbot Papers* at the Herald Office, and a few have been printed in Lodge's *Illustrations of British History.* Other papers relating to the Council in the North under Shrewsbury's Presidency are in the *Savile Papers*, the *Wombwell MSS*, and the *Fleming MSS* at Rydal Hall. These last are also useful for the Presidencies of Sussex and Huntingdon, as is the Collection of *Burghley Papers* at Lambeth Palace; but for Elizabeth's reign all other private collections are dwarfed by splendid collection of *Cecil Papers* at Hatfield House, which are specially useful for the presidencies of Hutton, Burghley, and Sheffield. Many of the earlier documents have been printed by Haynes, *Burghley State Papers*, or by Murdin, *State Papers* (1571-96), and the later volumes of the Calendar of these Papers published by the Historical Manuscripts Commissioners are good enough to make it unnecessary to consult the originals. But as yet no documents of James I's reign have been published; I therefore owe the Marquis of Salisbury a debt of gratitude for giving me permission to consult the later documents, among which are some of unique importance for the right understanding of the history

of the Council.* For Sheffield's Presidency, *Lord Muncaster's MSS*, and for Wentworth's, the *Strickland MSS* and *Lord Edmund Talbot's Papers* provide additional material, as do the *Temple Newsome MSS.* for the presidencies of Sheffield, Scrope and Wentworth. There can, however, be no question that, after the *State Papers* and *Privy Council Registers*, the most important source for Wentworth's presidency is the *Coke MSS.* at Holkam. They are even more important than the collection of *Letters and Dispatches* printed in 1739, for these relate chiefly to Irish, and at the end, to national affairs. The *Clarendon Papers* at the Bodleian add very little to the information to be gained from the Journals of the two Houses for 1641. The *John Hopkinson Collection* used by Whitaker in preparing his History of Richmondshire, and now in the possession of Sir Matthew Wilson at Eshton Hall, Gargrave,** contains a number of documents relating to the Council in the North, which, however, I have not seen. It may be well to explain here that, although the *Duke of Northumberland's MSS* are probably of the highest value for the history of the Council before 1537, the well-nigh complete exclusion of the Percies from a share in the government of the North after the Pilgrimage of Grace, has made that portion of the papers which has been calendared for the Historical MSS Commissioners of no value for the history of the Council in the North as an established institution.

(d) *Municipal Records.* — Only in a few cases have the Records of the Municipalities within the limits of the Council's jurisdiction been published, or even calendared. According to the information kindly given by the Town Clerks of the chief towns north of the Trent, there are in the Records hardly any references to the Council. This information is fully confirmed by such Calendars as have been published : those of *Berwick*, *Beverley*, and *Kendal* by the Historical MSS Commissioners, and those of *Doncaster* by the Corporation. The great exceptions are *York* and *Hull*. From the *House Books* of the former city has come most of the information through which we can trace the history of the King's Lieutenant in the North who preceded the Lord President and Council in the North parts. From them, too, we obtain our most valuable information as to the work of the Council as an administrative body during Elizabeth's reign. At Hull there are several official documents and letters from the Council ; originals, not copies as at York, appended to some of which are the only impressions of the Signet of the Council in the North that I have seen.

To these chief sources of informations about the Council in the North must be added a large number of printed authorities, some original, some secondary, from which isolated facts have been gleaned, with a smaller number of authorities to which is due a less tangible, but far greater, debt of gratitude for aid in interpreting the data collected. As all the more important of these works have recently been critically dealt with by the

* Written in 1914.
** This collection has since gone to America.

learned writers of the volumes of Longmans' Political History of England, it would be superfluous as well as impertinent for me to attempt another survey here. I therefore confine myself to appending to this account of the Manuscript sources, a list of the Printed Authorities consulted by me.

II. PRINTED AUTHORITIES.

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APPENDIX II.

i.

JUSTICES OF PEACE, HIGH COMMISSIONERS, LIEUTENANTS AND LORDS PRESIDENTS IN THE NORTH PARTS, 1399-1641.

a. *Justices of Peace in the North Parts.*

1399	Henry Percy, 1st Earl of Northumberland, Warden-general of the Marches, J. P. in Nthld., Cbld., Wstld., & Yks. [1]	Ralph Neville, 1st Earl of Westmorland and Richmond, J. P. in Cbld., Wstld., & Yks. [2]
1403	Ralph, Earl of Westmorland & Richmond, Warden of the West March (1403-14), J. P. in Nthld., Cbld., Wstld., & Yks. [3]	John of Lancaster, afterwards Earl of Kendal & Duke of Bedford, Warden of the East & Middle Marches (1403-14), J. P. in Nthld., Cbld., & Yks. [3]
1418		Henry Percy, 2nd Earl of Northumberland, Warden of the East & Middle Marches (1417-52), J. P. in Nthld., Cbld., &Yks. [4]
1421	Richard Neville, Earl of Salisbury, Warden of the West March, Justice of Forests N. of Trent, Constable of Pontefract, J. P. in Cbld., Wstld., Nthld., Yks., Dur., & Lancs. [5]	
1455		Henry Percy, 3rd Earl of Northumberland, Warden of the East & Middle Marches, J.P. in Nthld. Cbld., & Yks. [5]

1 Rot. Sc. ii. 152; Cal. Pat. 1399-1401, pp, 537, 562, 565-7.
2 Ib. pp. 557, 563-7.
3 Ib.; Rot. Sc. ii. 164-6; Rot. Par. iii. 604.
4 Rot. Sc. ii. 221; Cal. Pat. 1416-22, pp. 541, 457, 462-3.
5 Doyle, Official Baronage.

b. *The King's Lieutenant in the North Parts.*

1459-61 Henry Percy, 3rd Earl of Northumberland, Warden of the East & Middle Marches, Constable of Scarborough, Warden & Chief Justice of Forests N. of Trent, J. P. & Commissioner of Array in Nthld., Cbld., & Yks.[6]

c. *High Commissioners in the North Parts.*

1462 Richard Neville, Earl of Warwick & Salisbury, Warden of the West March, Justice of Forests N. of Trent, Justice of Peace & of Oyer & Terminer in the North Parts; [7] Lieutenant in the North parts (Nov. 1262).[7a]

John Neville, Lord Montague, afterwards Earl of Northumberland, Warden of the East & Middle Marches, Constable of Pontefract, Justice of Peace & of Oyer & Terminer in the North Parts. [7]

1470 Henry Percy, 4th Earl of Northumberland, Warden of the East & Middle Marches, afterwards Warden-general (1484), Constable of Bamborough, Dunstanborough, Newcastle & Knaresborough, J. P. in Nthld., & Yks, afterwards in Cbld., & Wstld. (1484). [7]

1472 Richard Plantagenet, Duke of Gloucester, Earl of Richmond & Kendal, Warden of the West March, Justice of Forests N. of Trent, J. P. in Cbld., Wstld., & Yks., Seneschal of the Duchy of Lancaster in the North Parts, Lieutenant in the North, 1482. [7]

d. *Lieutenants & High Commissioners in the North Parts.*

1484 John de la Pole, Earl of Lincoln, Justice of Peace & of Oyer & Terminer in Yks. [8]

1485 Richard, Lord Fitzhugh, (?) Constable of Richmond, Middleham, and Barnard Castle. [9]

6 Rot. Sc. ii. 355; Cal. Pat. 1452-61, pp. 535, 559-60, 594-5, 663, 673, 682-3.
7 Doyle.
7a Cal. Pat. 1461-67, p. 231.
8 Cal. Pat. 1476-85, pp. 397-401; Harl. 432, ff. 264b, 269b.
9 See p. 71-2.

1486 Henry, 4th Earl of Northumberland, Warden of the East & Middle Marches, Sheriff of Nthld., Constable of Bamborough, Dunstanborough, Newcastle, & Knaresborough, Justice of Forests N. of Trent, Justice of Peace & of Oyer & Terminer in the North.[10]

1489 Thomas Howard, Earl of Surrey, afterwards 1st Duke of Norfolk, Deputy-warden in the East & Middle Marches for Princes Arthur & Henry, successively Wardens-general, Justice of Forests N. of Trent.[11]

1499 William Sever, Abbot of St. Mary's of York, Bishop of Cartiste.

1502 Thomas Savage, L. L.D., Archbishop of York.[12]

1507-9 Margaret, Countess of Richmond.[13]

1525 Henry Fitzroy, Duke of Richmond & Somerset, Warden-general of the Marches, Justice of Forests N. of Trent, High Steward of Durham & the Liberties of York.[14]

Presidents of the King's Council in the North:

1530 Cuthbert Tunstall, Bishop of Durham.[15]

1533 Henry, 6th Earl of Northumberland, Warden of the East & Middle Marches.[16]

Jan. 1537 Thomas Howard, 3rd Duke of Norfolk.[17]

e. *Lords Presidents of the King's Council in the North Parts.*

Oct. 1537-June 1538 Cuthbert Tunstall, Bishop of Durham[18].

June 1538-Feb. 1550 Robert Holgate, Bishop of Llandaff, afterwards Archbishop of York.[20]

Feb. 1550-Sept. 1560 Francis, Earl of Shrewsbury.[21]

Jan. 1561-Sept. 1563 Henry, Earl of Rutland.[22]

[Feb. 1564 Ambrose, Earl of Warwick].[23]

May 1564-June 1568 Thomas Young, L. L.D., Archbishop of York.[24]

10 Rot. Sc. ii. 470; Cal. Pat. 1485-94, pp. 138, 280, 556-7; Dugdale, Bar. Agl. i. 282.
11 Rot. Sc. ii. 517-22; Bar. Angl. ii. 269.
12 York House Books, ix. f. 17.
13 Letters & Papers of Henry VIII, xii. pt. 2 no. 186 (35).
14 L. & P. iv. no. 1510; Camd. Misc. xii. 2.
15 Tonge, Visitation of Yorkshire, 1530, 26; Y.H.B. xi. f. 98; Privy Seals, Ser. II no. 630.
16 See p. 115 ff.
17 L. & P. xi. no. 1410; ib. xii. pt. 1. no. 98.
18 Titus, F. iii. no. 94; L. & P. xii. pt. 2. no. 102 (2).
19 Ib. no. 651.
20 Ib. xiii. no. 1269.
21 Harl. 1088.
22 Pat. 3 Eliz. p. 11.
23 For. Cal. 1564-5, nos. 186, 266
24 Pat. 6 Eliz. p. 4.

July 1568-Aug.	1572	Thomas, Earl of Sussex. [25]
Aug. 1572-Dec.	1595	Henry, Earl of Huntingdon. [26]
		Chief Councillor in the North: -
Feb. 1596-Aug.	1599	Matthew Hutton, Archbishop of York. [27]
Aug. 1599-June	1603	Thomas, 2nd Lord Burghley, afterwards Earl of Exeter. [28]
July 1603-Jan	1619	Edmond, Lord Sheffield, afterwards Earl of Mulgrave. [29]
Jan. 1619-Dec.	1628	Emmanuel, Lord Scrope, afterwards Earl of Sunderland. [30]
Dec. 1628-April	1641	Thomas, Lord Wentworth, afterwards Earl of Strafford. [31]
		Vice-President, (1632-41) : - Sir Edward Osborne.
April-Aug.	1641	Thomas, 2nd Lord Savile of Pontefract. [32]

[Feb. 1665 George, 2nd Duke of Buckingham.] [33]

ii.

SECRETARIES & KEEPERS OF THE SIGNET OF THE COUNCIL IN THE NORTH, AND THEIR DEPUTIES, 1525-1641.

	Secretaries	*Deputies.*
July 1525	John Uvedale [34]	
1527		John Bretton [35]
Aug. 1542		Thomas Eynns [36]
Feb. 1550	Thomas Eynns [37]	—
Aug. 1574		George Blythe [38]
Aug. 1578	George Blythe [39]	—

25 Cal. Sp. P. 1568-79, 68 ; Hatfield Cal. i. nos. 1189, 1209 ; Cal. S. P. Dom. Add. 1566-79, 424.
26 Ib. ; Lans. 79. no. 40.
27 Cal. Bord. P. ii. no. 225 ; Egerton P. 210 ; Hatfield Cal. ix. 317.
28 Pat. 41 Eliz. p. 17 ; Hatfield MSS. c. nos. 49, 94.
29 Pat. 1 Jac. I. p. 21d.
30 S. P. Dom. Ja. I. cv. no. 104 ; Harl. 1877. f. 77.
31 Pat. 4 Car. I p. 3 m. 1.
32 Drake, Eboracum, 370.
33 Cal. S. P. Dom. 1664-5, 199, 285.
34 Harl. 589. f. 192.
35 L. & P. iv. no. 4042.
36 See p. 170 n,
37 Pat. 4 Ed. VI p. 6.
38 Lans. 18 f. 196.
39 Lans. 33 f. 16.

Sept. 1581	Henry Cheeke [40]	—
Oct. 1586	Robert Beale [41]	—
July 1587		Ralph Rokeby the younger [42]
Aug. 1589	Robert Beale [43]	—
	Ralph Rokeby	—
March 1595	Robert Beale [44]	—
Aug. 1595		John Ferne [45]
July 1601	Sir John Herbert [46]	
June 1604	Sir John Ferne [47]	—
	Sir William Gee	
June 1609	Sir William Gee [48]	—
March 1612	Sir Arthur Ingram [49]	William Ingram, L. L. D. [49]
Jan. 1627		Sir Arthur Ingram, jr. [50]
March 1633	Sir John Melton [51]	—

iii.

ATTORNEYS-GENERAL IN THE NORTH PARTS, 1556-1641

1556	Thomas Sutton. [52]
1558	William Woodroffe. [52]
1559	Richard Whalley. [52]
1561	Sir Anthony Thorold. [53]
1570	Martin Birkett. [54]
1589	William Payler. [55]
1598	Sir Cuthbert Pepper. [56]
1603	Sir John Jackson. [57]
1608	Jonas Waterhouse. [58]

40 Pat. 23 Eliz. p. 12.
41 Pat. 28 Eliz. p. 1.
42 Harl. 1088 f. 35.
43 Calig. C. iii. 584.
44 Harl. 6997 f. 3.
45 S. P. Dom. Eliz. ccliii. no. 80; Murdin, p. 807.
46 S. P. Dom. Eliz. cclxxxi. no. 9.
47 S. P. Dom. Ja. I. viii. no. 64.
48 Ib. xlvii. f. 66.
49 Ib. lxvi. no. 79.
50 S. P. Dom. Ch. I. li. no. 40.
51 Pat. 8 Car. I. p. 8. m. 16d.
52 Bord. P. iv. no. 424.
53 Ib. iv. no. 583.
54 S. P. Dom. Add. xviii. no. 56; Titus, F. III. 140.
55 Titus. F. xiii. 260.
56 S. P. Dom. Eliz. cclxvi; 11 Jan. 1598.
57 S. P. Dom. Ja. I. ii. no. 74.
58 Ib. lxv. no. 68; Pat. 7 Jac. I. p. 2.

1611 Sir William Dalton. [59]
1628 Sir George Ratcliffe. [60]

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iv.

MEMBERS OF THE KING'S COUNCIL IN THE NORTH PARTS, 1530—1641.

[Councillors whose names are in heavy type were Lords Presidents; those whose names are in italics were the Common Law members, later known as the Judges of the Court at York. The offices given are those held by the members north of the Trent.* signifies that the date is that of the member's death. The references are only for such facts as are not given in the Commissions or Instructions- and cannot be ascertained from the *Dictionary of National Biography*, G. E. C. 's *Complete Peerage*, Foss's *Lives of the Judges*, Le Neve's *Fasti Ecclesiae Anglicae*, or Foster's *Yorkshire Pedigrees*].

Tunstall, Cuthbert, L.L.D., Bishop of Durham, (June 1530-June 1538, Feb. 1550-Oct. 1551, Sept. 1553-Nov. 1559 *).

Higden, Brian, D.C.L., Archdeacon of the West Riding & Dean of York, (July 1525-5 June 1539 [1]. *)

Magnus, Thomas, Archdeacon of the East Riding, (July 1525-Feb. 1550) Receiver of the King's Wards' lands north of the Trent. [2]

Tate, William, D.D., (July 1525-Jan. 1537?)

Neville, Sir John, of Snape, 4th Lord Latimer, (June 1530-1545 *).

Constable, Sir Marmaduke, the elder, (June 1530-12 Sept. 1545 * [3]).

Bulmer, Sir William, (July 1525-Jan. 1533), Captain of Norham, Lieutenant of the East March [4].

Tempest, Sir Thomas, serjeant-at-law, (July 1525-1545 *), Seneschal & Comptroller of the Bishopric [5].

Eure, Sir William, 1st Lord Eure, (July 1525-March 1548 *), Escheator of Durham, [6] Steward of Pickering, Whitby Strand, Sir Francis Bigod's lands, & Jervaulx, [7] Constable of Scarborough, Warden of the East March.

Fairfax, Thomas, serjeant-at-law, (July 1525-1544 *), Recorder of Doncaster, [8] King's Attorney in the County Palatine of Lancaster. [9]

59 S. P. Dom. Ja. I. lxv. no. 68; Pat. 14 Jac. I. p. 22d.
60 Pat. 4 Car. I. p. 3. m. 1.
1 Lans. 979 f. 58.
2 L. & P. iv. no. 712.
3 Foster, ii. Constable.
4 L. & P. iii. no. 2875.
5 Ib. no. 2531.
6 Ib. no. 2877.
7 S. P. Dom. Add. ii. no. 12.
8 Records of Doncaster, ii. 67.
9 W. R. Williams, Lancaster Official Lists, 81.

Bowes, Sir Robert, (July 1525-1555 *), Master of the Rolls, Master of Requests, Forester, Steward and Constable of Barnard Castle [10], Warden of the Middle March.

Babthorpe, Sir William, (July 1525-1555 [11] *).

Chaloner, Robert, K. C. (June 1530-1555 [11] *).

Uvedale, John, (July 1525-Feb. 1550), Secretary and Keeper of the Signet to the Council in the North.

Northumberland, Henry, 6th Earl of, (June 1530-Jan. 1537), Warden of the East and Middle Marches.

Ellerker, Sir Ralph, the younger, (Jan. 1533-1544*), Steward of Holderness, [12] Constable of Scarborough, [12] Warden of the Middle March.

Wharton, Sir Thomas, 1st Lord Wharton, (Feb. 1533 [13]-Aug. 1568 *), Steward and Constable of Cockermouth, [14] Warden of the West March.

Darcy, Thomas, Lord, [15] (1533 ?-1537), Warden and Chief Justice of the Forests beyond Trent, Constable of Pontefract.

Constable, Sir Robert, [16] (1533 ?-1537).

Frankleyn, William, (1525-30; 1533-36), [17] Archdeacon of Durham.

Norfolk, Thomas, 3rd Duke of, (Jan.-Oct. 1537), Lieutenant in the North.

Westmorland, Ralph, Earl of, (Jan. 1537-April 1542 *).

Cumberland, Henry, 1st Earl of, (Jan. 1537-April 1549 *).

Hastings, Sir Brian, (Jan.-Oct. 1537), Steward of Tickhill and Conisborough. [18]

Thirleby, Dr. Thomas, afterwards Bishop of Ely, (Jan.-Oct. 1537).

Curwen, Dr. Richard, afterwards Bishop of Norwich, (Jan.-Oct. 1537).

Dacre, William, Lord, (Oct. 1537-April 1561), Warden of the West March.

Holgate, Robert, Bishop of Llandaff (1537), Archbishop of York (1545), (Oct. 1537-Feb. 1550).

Bellasis, Richard, of Henknal, (Oct. 1537-28 March 1540 [19] *).

Jenney, Sir Christopher, (1540-1543 *), Justice of Assize.

Hynde, John, serjeant-at-law, (1540-Jan. 1550 *), Justice of Assize.

Southwell, Robert, Master of Requests, (April 1541-?). [20]

Savile, Sir Henry, of Thornhill, (Feb. 1542 [21]-April 1558 *), Steward of Pontefract and Wakefield. [22]

10 L. & P. viii. pt. 1. no. 623 (26).
11 Harl. 1088.
12 L. & P. vi. nos. 51, 418 (1).
13 L. & P. vi. no. 150.
14 Humberston's Survey; K. R. Misc. Bks. 37, 38.
15 See p. 116.
16 Ib.
17 L. & P. iv. no. 1596; ib. vii. no. 125.
18 Ib. xi. no. 1026.
19 Foster, ii. 'Bellasis'.
20 L. & P. xvi. no. 684.
21 Harl. 1088 f. 5b.
22 Hunter, S. Yorks, ii. 301

Long, Sir Richard, (12 March 1542-?), Captain of Hull. [23]

Shrewsbury, Francis, Earl of, (April 1545-Sept. 1560 *), Justice of Forests beyond Trent, [24] Keeper of all royal castles in York and Notts. [25]

Molyneux-, Edmund, serjeant-at-law, (Jan. 1543-Oct. 1552 *), Justice of Assize.

Gargrave, Sir Thomas, (April 1545-March 1579 *), Steward of the Lordship and Soke of Doncaster, [26] Deputy-Constable of Pontefract, [27] Receiver of Yorkshire, [28] Custos Rotularum of the West Riding. [29]

Norton, Richard, (April 1545-Dec. 1558), Constable of Norham, High Steward of the Earl of Lennox's lands. [30]

Beckwith, Sir Leonard, (Feb. 1546-April 1557 *), Receiver of the Court of Augmentations in Yorkshire. [31]

Cumberland, Henry, 2nd Earl of, (Dec. 1546 [32]-Jan. 1570 *), Constable & Steward of Knaresborough, Steward of Ripon. [33]

Fairfax, Sir Nicholas, of Walton, (Feb. 1548-Sept. 1553; May 1555-1570 *), Steward of St. Mary's Abbey lands. [34]

Mennell, Robert, of Hilton, serjeant-at-law, (Feb. 1548-April 1563 *), Seneschal and Comptroller of the Bishopric. [35]

Rokeby, John LL. D., Chancellor of York (Feb. 1548-1573 *)

Westmorland, Henry, Earl of, (Feb. 1550-Aug. 1563 *), Steward of Pickering. [36]

Conyers, John, 3rd Lord, (Feb. 1550-1556 *), Bailiff, Steward & Constable of Richmond & Middleham, Keeper of the Forest of Galtres, [37] Deputy-Warden of the West (Dec. 1551) & East (1553) Marches.

Conyers, Sir George, (Feb. 1550-1567 *), Seneschal of Allertonshire. [38]

Neville, Sir Anthony, (Feb. 1550-July 1557 *).

Bellasis, Anthony, LL. D., (Feb. 1550-July 1552 *).

Eynns, Thomas, (Feb. 1550-April 1578 [39] *), Secretary & Keeper of the Signet (1555).

Talbot, George, Lord, afterwards Earl of Shrewsbury, (Sept. 1553-Nov.

23 L. & P. xvii. no. 161.
24 Pat. 2 Ed. VI. p. 2.
25 Pat. 6 Ed. VI. p. 8d.
26 Rec. Donc. ii. 220.
27 S. P. Dom. Add. xii. no. 68 (1).
28 Ib. xix. no. 6.
29 S. P. Dom. Eliz. ii. no. 17.
30 Harl. 4990 f. 138; L. & P. xxi. pt. 2 no. 181.
31 L. & P. xi. no. 750; ib. xxi. pt. 1 no. 148 (91-2).
32 Harl. 4990 f. 138.
33 S. P. Dom. Add. xii. no. 68 (1).
34 Ib.
35 For. Cal. 1559-60, no. 850.
36 Lodge, Illustrations of British History, i. 241.
37 A. P. C. ii. 75.
38 Ingledew, History of Northallertonshire, 103.
39 Lans. 33 f. 161.

1590 *), Constable of Pontefract, [40] Justice of Forests beyond Trent.

The Justices of Assize for the time being, (1553-1641).

Vavasour, Sir William, of Haselwood, (Sept. 1553-1565 *), Sheriff of Yorks, 2 Ed. VI & 6 Eliz.

Wharton, Sir Thomas, (Sept. 1553-April 1561), Steward of the Crown lands in the East Riding. [41]

Challoner, Sir Thomas, of Nostal, (Sept. 1553-1557).

Frobisher, Francis, (Sept. 1553-May 1563 *), Recorder of Doncaster [42].

Rokeby, Ralph, serjeant-at-law, (June 1555-July 1556 *) Queen's Attorney in the Count Palatine of Lancaster. [43]

Browne, George, serjeant-at-law, (Feb. 1557 [44]-July 1566 [45] *), Queen's Attorney in the County Palatine of Lancaster. [45]

Heath, Nicholas, Archbishop of York, (Aug. (?) 1557-Feb. 1560 *).

Lumley, John, 6th Lord, (Aug. (?) 1557-April 1600 *).

Northumberland, Thomas, 7th Earl of, (Aug. (?) 1557-Nov. 1569), Warden of the East & Middle Marches, Keeper of Tynedale & Redesdale, [46] Steward & Constable of Richmond & Middleham. [47]

Percy, Sir Henry, afterwards 8th Earl of Northumberland, (Dec. 1558-April 1571), Constable of Norham & Tynemouth.

Gate, Sir Henry, (Dec. 1558-April 1589 *), Deputy-Steward & Constable of Pickering & Pickering Lythe. [48]

Estofl, Christopher, (Dec. 1558-May 1566 [48] *), Feodary of the West Riding [49] Custos Rotulorum of the East Riding. [50]

Savile, Henry, of Lupset, (Dec. 1558-Jan. 1569 *) Surveyor ,of the Crown lands north of Trent. [51]

Vaughan, John, (Dec. 1558-June 1577 *), Steward of Crown lands in Cumberland & Westmorland, [52] Custos Rotulorum of the East Riding (1566). [53]

Corbet, Richard, K.C., (Dec. 1558-June 1566 *).

Rutland, Henry, Earl of, (Jan. 1561-Sept. 1563 *), Steward of Wakefield & Sandal. [54]

Young, Thomas, LL. D., Archbishop of York, (Jan. 1561-June 1568 *).

Pilkington, James, Bishop of Durham, (Jan. 1561-Jan. 1576 *).

40 S. P. Dom. Add. xii. no. 68 (1).
41 ib.; ib. xii. no. 21.
42 Rec. Donc.
43 Williams, op. cit. 81.
44 Harl. 1088. f. 16.
45 Williams, op. cit. 81.
46 S. P. Dom. Add. viii. no. 27.
47 Ib. xii. no. 68 (1).
48 Harl. 1088. f. 22.
49 S. P. Dom. Add. xiii. no. 21.
50 S. P. Dom. Eliz. ii. no. 17.
51 Hunter, The Savile Family.
52 S. P. Dom. Add. xii. no. 68 (1).
53 S. P. Dom. Eliz. ii. no. 17.
54 L. & P. vi. no. 595 (18).

Grey de Wilton, William, Lord, (Jan. 1561-Dec. 1562), Warden of the East March, Governor of Berwick.

Eure, William, 2nd Lord, (Jan. 1561-Feb. 1594 *).

Forster, Sir John, (Jan. 1561-March 1595), Warden of the Middle March, Keeper of Tynedale & Redesdale, Steward & Constable of Bamborough. [55]

Skinner, Ralph, Dean of Durham, (Jan. 1561-June 1562 *).

Egglesfield, John, of Sutton, (Jan. 1561-1563 *).

Bowes, Sir George, (April 1561-Aug. 1580 [56]), Steward (1560) & Seneschal (1568) of Allertonshire, Steward of Barnard Castle. [57]

Whittingham, William, Dean of Durham, (May 1564-June 1579 *).

Scrope, Henry, Lord, (April 1563-May 1592 *), Warden of the West March, Governor of Carlisle, Steward & Constable of Richmond & Middleham (1570) [58].

Bedford, Francis, Earl of, (Feb. 1564-Oct. 1567), Warden of the East March, Governor of Berwick.

Constable, Sir John, of Burton Constable, (June 1566 [59]-Dec. 1567 [60]).

Tankard, William, (June 1566 [59]-Oct. 1572), Recorder of York. [61]

Meeres, Lawrence, (June 1566 [59]-1592 *), Recorder of Berwick. [62]

Bellingham, Alan, (June 1566 [59]-Nov. 1571 *), Custos Rotulorum of Westmorland. [63]

Sussex, Thomas, Earl of, (Aug. 1568-Aug. 1572).

Westmorland, Charles, Earl of, (Nov. 1568-Nov. 1569).

Hunsdon, Henry, Lord, (Nov. 1568-July 1596 *), Warden of the East March, Governor of Berwick.

Hutton, Matthew, Dean of York, Bishop of Durham (1589), Archbishop of York (1595), (Nov. 1568-Jan. 1606 *).

Drury, Sir William, (Nov. 1568-Oct. 1579 (?)), Governor of Berwick.

Constable, Sir Marmaduke, of Everingham, (Nov. 1568-Oct. 1572).

Carlisle, Richard, Bishop of, (Dec. 1570-1577 *).

Huntingdon, Henry, Earl of, (Aug. 1572-Dec. 1595 *), Steward & Constable of Sheriffhutton. [64]

Grindal, Edmund, Archbishop of York, (Oct. 1572-Feb. 1575).

Rokeby, Ralph, the elder, Master of Requests, (Oct. 1572-4 June 1596 *).

Rutland, Edward, Earl of, (Oct. 1572-April 1587 *).

Darcy, John, Lord, (Oct. 1572-1587 *).

55 Cal. Bord. P. ii. no. 122.
56 S. P. Dom. Add. xxvii. no. 43.
57 Sharpe, Memorials of the Rebellion of 1569, 4.
58 Ingledew, op cit. 56.
59 Vesp. F. xiii. 135; Harl. 1088; S. P. Dom. Add. xiv. no. 34; ib. xxi. no. 86 (2).
60 Longleat MSS. ii. 19.
61 Drake, Ebor. 368.
62 Cal. Bord. P. i. 240.
63 S. P. Dom. Eliz. ii. no. 17.
64 Ib. cclxxi. no. 144 (9).

Ogle, Cuthbert, Lord, (Oct. 1572-1597 *).

Rodes, Francis, serjeant-at-law, (May. 1574-Jan. 1589 *), Justice of Common Pleas.

Bowes, Robert, (May. 1574-Nov. 1597 *), Treasurer of Berwick. [65]

Gibson, (Sir) John, L.L.D., (May 1574-Feb. 1613 [66] *).

Blythe, George, (Aug. 1574 [67]-Aug. 1581 *), Secretary & Keeper of the Signet (1578).

Sandys, Edwin, Archbishop of York, (March 1576-July 1588 *).

Fairfax, Sir William, of Walton, (Nov. 1577 [68]-Aug. 1599 *).

Mallory, Sir William, (Nov. 1577 [68]-1603 *).

Boynton, Sir Thomas, (Nov. 1577 [68]-Dec. 1581 *).

Wortley, Francis, of Wortley, (Nov. 1577 [68]-March. 1583 *), Recorder of Doncaster. [69]

Bridges, Humphrey, (Nov. 1579-April (?) 1582 [70] *).

Cheeke, Henry, (Aug. 1581-Aug. 1586 *), Secretary & Keeper of the Signet.

The Bishops of Durham & Carlisle for the time being, (1582-1641).

The Deans of York & Durham for the time being, (1582-1641).

Cumberland, George, Earl of ,(Nov. 1582-Oct. 1605 *), Steward of Knaresborough, Warden of the West March, Governor of Carlisle.

Fairfax, Sir Thomas, of Denton, (Nov. 1582-Jan. 1599 *).

Hilliard, Sir Christopher, (Nov. 1582-1602 *).

Bowes, Sir William, (Nov. 1582-Oct. 1611 [71] *).

Blundeston, Lawrence, (Nov. 1582-July (?) 1588 [72] *).

Hurleston, Ralph, (Nov. 1582-Jan. (?) 1587 [73] *).

Purefy, Humphrey, (Nov. 1582-Sept. 1598 [74] *).

Beale, Robert, (Oct. 1586-1601*), Secretary & Keeper of the Signet.

Rokeby, Ralph, the younger, (July 1587-12 March 1595 *) Deputy-(1587), afterwards Joint- (1589) Secretary & Keeper of the Signet.

Stanhope, Sir Edward, I. LD., of Edlington, (July 1587-1603), Recorder of Doncaster. [75]

Piers, John, Archbishop of York, (Aug. 1589-Sept. 1594 *).

Cardinal, William, (Aug. 1589-Jan. 1599 [76] *).

Scrope, Thomas, Lord, (July 1592-Oct. 1609 *), Warden of the West March

65 Sharpe, op. cit.
66 The Genealogist, N.S. xx . 30.
67 Lans. 18 f. 196.
68 Cal. S. P. Dom. Add. 1566-79, p. 515-6; Harl. 1088.
69 Rec. Donc. iii. 1.
70 Harl. 1088 f. 32.
71 Sharpe, op. cit.
72 Harl. 1088 f. 35b.
73 Ib. f. 34b.
74 Hatfield Cal. viii. 343.
75 Rec. Donc. iv. 78.
76 Cal. S. P. Dom. Eliz. 1598-1601, p. 154.

Captain of Carlisle, Steward & Constable of Richmond & Middleham. [77]

Hales, (Sir) Charles, (July 1592 [78]-June 1619 *).

Ferne, (Sir) John, (Aug. 1595-June 1609 [79] *) Recorder of Doncaster, [79] Deputy- (1595), afterwards Joint- (1604) Secretary & Keeper of the Signet.

Eure, Ralph, 3rd. Lord, (Oct. 1595-April 1617 *), Warden of the Middle March.

Hesketh, (Sir) Thomas, (Oct. 1598 [80]-Oct. 1605 [81] *) Attorney of the Court of Wards, Queen's Attorney in the County Palatine of Lancaster. [81]

Bennett, (Sir) John, L.L.D., Bishop of Limerick, (March 1599 [82]-June (?) 1625).

Burghley, Thomas, 2nd Lord, afterwards **Earl of Exeter,** (Aug. 1599-Feb. 1623), Seneschal of Allertonshire, Steward & Constable of Sheriff-hutton (1599-1603). [83]

Shrewsbury, Gilbert, Earl of, (Aug. 1599-May 1616 *), Justice of Forests beyond Trent.

Willoughby d'Eresby, Peregrine, Lord, (Aug. 1599-June 1601 *), Governor of Berwick.

Darcy, John, Lord, (Aug. 1599-July 1635 *).

Sheffield, Edmond, Lord, afterwards **Earl of Mulgrave,** (Aug. 1599-1641), Constable & Steward of Sheriffhutton (1603-1619).

Carey, Sir Robert, afterwards Earl of Monmouth, (Aug. 1599-April 1639 *), Warden of the East March.

Savile, Sir John, Baron of the Exchequer, (Aug. 1599-Feb. 1606 *).

Malyverer, Sir Richard, (Aug. 1599-July 1603 *).

Fairfax, Sir Thomas, of Denton, 1st Lord Fairfax of Cameron, (Aug. 1599-May 1640 *).

Bevercotes, Samuel, (Aug. 1599-Sept. 1603 [85] *).

Clifford, Francis, afterwards Earl of Cumberland, (June 1601 [85]-Jan. 1611 *).

Talbot, Edward, afterwards, Earl of Shrewsbury, (July 1603-Feb. 1618 *).

Hoby, Sir Thomas Posthumous, (July 1603-1622 *).

Rearesby, Sir Thomas, (July 1603-1619 *).

Savile, Sir John, of Howley, afterwards Lord Savile of Pontefract (July 1603-Aug. 1630 *), Steward of Pontefract & Wakefield [86].

Lassells, Sir Thomas, (July 1603-1618 *).

Slingsby, Sir Henry, (July 1603-Dec. 1634 *).

Mallory, Sir John, (July 1603-1619 *).

77 Murdin. 799.
78 ib.
79 Rec. Donc. iv. 73.
80 S. P. Dom. Eliz. cclxviii. no. 92.
81 Williams, op. cit. 81.
82 S. P. Dom. Add. xxxiv. no. 3.
83 Ingledew, op. cit. 383; S. P. Dom. Eliz. cclxvii. no. 144 (9).
84 S. P. Dom. Jas. I. xxxv. no. 40.
85 Hatfield Cal. xi. 235.
86 Thoresby, Ducatus Leodensis, 150.

Constable, Sir Philip, of Everingham, (July 1603-Oct. 1619 *).
Boynton, Sir Francis, (July 1603-9 April 1617 *).
Hilliard, Sir Christopher, (July 1603-Nov. 1634 *).
Grymston, Sir Marmaduke, (July 1603-1604 *).
Wortley, Sir Richard, (22-25 July 1603 *).
Swift, Sir Robert, (July 1603-March 1626 *).
Bellasis, Sir Henry, (July 1603-Aug. 1624 *).
Fairfax, Sir Thomas, of Walton, (July 1603-Dec. 1636 *),
Griffith, Sir Henry, (July 1603-1619-25).
Hutton, Sir Richard, serjeant-at-law, (July 1603-1641), Recorder of Doncaster & York, Chancellor of Durham, Justice of Common Pleas.
Pepper, (Sir) Cuthbert, (July 1603-Aug. 1608 *) Surveyor, afterwards Attorney, of the Court of Wards, Chancellor of Durham.
Strickland, Sir Thomas, (July 1603-1614 *).
Williamson, Sir Richard, (Oct. 1603-1609 *).
Gee, Sir William, (June 1604-Nov. 1611 *), Secretary & Keeper of the Signet.
Ellis, Sir William, (April 1606-1636 *).
Chaworth, Sir George, (Oct. 1608 [87]-1615 (?)).
Dunbar, George, Earl of, (June 1609-April 1611 *).
Savile, Sir Henry, (June 1609-June 1632 *).
Jackson, Sir John, (June 1609-Oct. 1628 *), Recorder of Newcastle, Pontefract & Doncaster. [88]
Tildesley, Sir Thomas, (June 1609-1626; [89] March 1628-Jan. 1635), King's Attorney in the County Palatine of Lancaster (1604), Vice-chancellor of the Duchy (1606). [90]
The President, Vice-President, and Archbishop of York for the time being, (1609-1641).
Bourchier, Sir John, (June 1611 [91]-July 1627).
Bamburgh, Sir William, (June 1611 [91]-July 1623).
Ingram, Sir Arthur, (March 1613-March 1633), Secretary & Keeper of the Signet.
Ingram, William, L.L.D., (March 1613-24 July 1623), Deputy-secretary.
Ellis, Sir Thomas, (July 1616-Feb. 1628* [92]).
Gibson, Sir John, (July 1616-Aug. 1641).
Tankerd, Sir Henry, (July 1616-Nov. (?) 1628).
Scrope, Emanuel, Lord, afterwards **Earl of Sunderland,** (Jan. 1619-May 1630*), Constable & Steward of Richmond (1609-30) & Sheriffhutton (1619-27).

87 S. P. Dom. Ja. I. xxxvi, 22 Oct. 1608.
88 Rec. Donc. iv. 74; Whitaker, Life of Sir George Radcliffe, 167.
89 S. P. Dom. Ch. I. xxv. App. 16 Nov. 1626.
90 Williams, op. cit. 79, 80.
91 S. P. Dom. Ja. I. lxiv, 8 June 1611.
92 S. P. Dom. Ch. I. xciv, 21 Feb. 1628.

Clifford, Henry, Lord, (July 1619-Aug. 1641).
Wharton, Sir Thomas, (July 1619-April 1622*).
Wentworth, Sir Thomas, afterwards **Earl of Strafford,** (July 1619-April 1641), Constable & Steward of Richmond & Middleham (1630-41).
Metham, Sir Thomas, (July 1619-Aug. 1641).
Ellis, Sir George, (July 1619-1627).
Calvert, Sir George of Danby Wick, afterwards Lord Baltimore, (Aug. 1623-1624).
Foulis, Sir David, (July 1625-Nov. 1633).
Wyvell, Sir Marmaduke, (July 1625-Aug. 1641).
Alford, Sir William, (July 1625-Aug. 1641).
Goodrick, Sir Henry, (July 1625-Aug. 1641).
Cholmley, Sir Richard, of Whitby, (July 1625-21 Sept. 1631*).
Hodgson, Phineas, D.D., (July 1625-Aug. 1641).
Brooke, Christopher, (Nov. 1626 [93]-Feb. 1628 *).
Ingram, Sir Arthur, Jr., (Jan. 1627-Aug. 1641), Deputy-secretary & Keeper of the Signet, Constable & Steward of Sheriffhutton.
Lowther, Sir John, (July 1627-15 Sept. 1637*).
Dyoll, Sir Richard, (March 1628 [94]-Aug. 1641), Chancellor of Durham.
Osborne, Sir Edward, (June 1629-Aug. 1641), Vice-president (1633-1641).
Hotham, Sir John, (June 1629-Aug. 1641).
Graham, Sir Richard, (June 1629-Aug. 1641).
Dalton, Sir William, (June 1629-Aug. 1641), Recorder of York & Hull.
Hutton, Sir Richard, Jr., (June 1629-Aug. 1641).
Cutler, George, (June 1629-Aug. 1641).
Wandesford, Christopher, (June 1629-Aug. 1641).
Mainwaring, Edmund, (June 1629-Aug. 1641).
Ingram, John, (June 1629-1635).
Arundel & Surrey, Thomas, Earl of, (March 1633-Aug. 1641).
Northumberland, Algernon, Earl of, (March 1633-April 1636).
Carlisle, James, Earl of, (March 1633—April 1636).
Maltravers, Henry, Lord, (March 1633-Aug. 1641).
Hoby, Sir Thomas P., (March 1633-Aug. 1641).
Wentworth, Thomas, (March 1633-Aug. 1641).
Wentworth, William, (March 1633-Aug. 1641).
Melton. Sir John, (March 1633-Aug. 1641), Secretary & keeper of the Signet.
Savile, Sir William, (July 1636-Aug. 1641).
Rhodes, Sir Edward, (July 1636-Aug. 1641).
Wrightington, Sir Edward, (Nov. 1637-Aug. 1641).
Savile, Thomas, Lord, (April-Aug. 1641), Steward of Wakefield & the Forest of Galtres.
Buckingham, George, Duke of, (Feb. (?) 1665)

[93] S. P. Dom. Ja. I. cli. no. 81.
[94] S. P. Dom. Ch. I. xi. 16 Nov. 1626.

APPENDIX III.

List of Commissions and Instructions issued to Lords Presidents of the Council in the North*.

July	1484	Regulations for the Council of the North (Harl. 433. f. 264b).
July	1525	*Commission and Instructions for the Council of the* **Duke of Richmond,** the King's Lieutenant in the North (L. & P. iv. No. 1596).
June	1530	Commission to **Cuthbert Tunstall, Bishop of Durham,** President of the King's Council in the North (Privy Seals-Ser. II. 630).
Jan.	1537	Instructions to **Thomas Howard, Duke of Norfolk,** the King's Lieutenant in the North (L. & P. xii. (1) No. 96).
Oct.	1537	Instructions to **Tunstall, Bishop of Durham,** Lord President of the King's most honourable Council established in the North parts (Titus, F. iii. 94; L. & P. xiii. pt. 1. No. 1269. Arts. 1-29).
June	1538	Instructions to **Robert Holgate, Bishop of Llandaff,** Lord President (L. & P. xiii. pt. 1 No. 1269).
March	1540	Commission to the same (Pat. 31 H. VIII. p. 6. m. 13).
Jan.	1545	Instructions to the same renewed on election as Archbishop of York (L. & P. xv. (1) No. 116) (Printed, St. P. v. No. 402).
Feb.	1547	Commission to the same renewed on Edward VI's accession (Pat. 1 Ed. 6. p. 4).
Feb.	1550	Instructions to **Francis, Earl of Shrewsbury,** Lord President (S. P. Dom. Add. Ed. VI. iii. No. 47).
1 Sep.	1553	Letters Patent to the same for the continuance of the Council on Mary's accession (Pat. 1 Mary p. 1. m. 8.)
	1553	Instructions to the same (S. P. Dom. Add. Ed. VI. iii. No. 47).
	1556	Instructions to the same on the reconstruction of the Council (Border Papers, i. No. 64).
Dec.	1558	Commission to the same on Elizabeth's accession (Pat. 1 Eliz. p. 4).
Dec.	1558	Instructions to the same (Border Papers iii No. 427).

*) Those of which no copies exist are given in italics, in which case the reference is to the document from which knowledge of the Commission or Instructions is derived.

20 Jan.	1561	Commission to **Henry, Earl of Rutland,** Lord President (Pat. 3 Eliz. p. 11).
,,		Instructions to same (Border Papers iv. No. 583).
26 Apl.	1561	Commission renewed (Calig. B. ix. 158).
Feb.	1564	*Commission to* **Ambrose, Earl of Warwick,** *Lord President* (*For. Cal. 1564-5*, Nos. 186, 266).
17 May	1564	Commission to **Thomas Young, Archbishop of York,** Lord President (Pat. 6. Eliz. p. 4.).
4 June	1564	Instructions to same (Titus. F. iii. 158).
1 June	1566	*Instructions renewed* (Titus. F. iii. 138).
3 Nov.	1568	Instructions to **Thomas, Earl of Sussex,** Lord President (Titus. F. iii. 147).
16 March	1570	Commission to same (S. P. Dom. Add. Eliz. xviii. No. 10).
24 Oct.	1572	Instructions (abstract) to **Henry, Earl of Huntingdon,** Lord President (S. P. Dom. Add. Eliz. xxi. No. 90 ; Titus. F. iii. 138).
May	1574	Instructions (full) to same (Titus. F. iii. 140 ; (draft) S. P. Dom. Add. Eliz. xxiii. Mo. 59 ; cf. Harl. 4990. No. 7 ib. 7035. No. 11).
Nov.	1579	Additional Instructions to same (Egerton MSS. 2790 f. 30).
July	1582	Instructions to same (S. P. Dom. Add. Eliz. xxvii. No. 128).
21 Nov.	1582	Commission to same (Calig. C. iii. 583).
22 Aug.	1589	Instructions renewed (Calig. C. iii. 584: Titus. F. xiii. 260).
26 Feb.	1596	Instructions to **Matthew Hutton, Archbishop of York,** Head of the Council (Border Papers, ii. No. 235).
10 Aug.	1599	Commission to **Thomas, Lord Burghley,** Lord President (Pat. 41 Eliz. p. 17).
,,		Instructions to same (S. P. Dom. Eliz. cclxxii. No. 7 (draft) ; Titus. F. iii. 30 (abstract) ; cf. S. P. Dom. Ja. I. ii. No. 74).
22 July	1603	Commission to **Edmond, Lord Sheffield,** Lord President (Pat. 1 Jac. I. p. 2ld.).
,,		Instructions to same (S. P. Dom. Ja. I. ii. No. 74).
21 June	1609	Commission and Instructions to same (Pat. 7 Jac. I. p. 2).
15 July	1616	Commission and Instructions to same (Pat. 14 Jac. I. p. 22d).
11 July	1619	Commission and Instructions to **Emanuel Lord Scrope,** Lord President (Pat. 17. Jac. I. p. 11 ; Sign Man. No. 23).
2 July	1625	Commission and Instructions renewed (Pat. 1 Car. 1. p. 9d. No. 10).
25 July	1627	Commission and Instructions renewed (Pat. 3 Car. 1. p. 25. No. 15).

9 June	1628	Commission and Instructions renewed (Pat. 4 Car. 1. p. 28, Nos. 28, 29), printed, Rymer. xvii p. 141.
15 Dec.	1628	Commission and Instructions to **Thomas, Lord Wentworth,** Lord President (Pat. 4 Car. I. p. 3. m. l.), printed, Rymer. xvii. p.
22 June	1629	Commission and Instructions amended (Pat. 5 Car. 1. p. 18 No. 9 ; p. 17 No. 8 ; Harl. 2138 f. 88).
21 March	1633	Commission and Instructions amended (Pat. 8 Car. 1. p. 8. m. 16d), printed, Rymer. xix p.
29 July	1636	Commission and Instructions (Pat. 12 Car. 1. p. 15 No. 1)
21 Nov.	1637	Commission and Instructions amended (Pat. 13 Car. 1. p. 31 No. 19).
April	1641	*Commission and Instructions to* **Thomas, Lord Savile,** *Lord President* (Drake, *Ebor.* App. xxxvi).
Feb. (?)	1665	*Commission to* **George, Duke of Buckingham,** *Lord President* (*Cal. S. P. Dom. Ch. II. 1664-5*, pp. 199, 288).

APPENDIX IV.

i.

COMMISSION OF 1530

(*Privy Seals. Ser. II. No. 630*).

Please it your highness to command your letters patents to be made in form following And that this bill signed with your hands may be immediate and sufficient warrant to your Chancellor of England to seal and deliver out the same under your great seal.

Henry R.

Rex reverendo in Christo patri Cuthberto Dunelmensi Episcopo, dilectibusque sibi in Christo Briano Higden Clerico decano Eboracensi, Thomae Magnus Archidiacono de Estriding, Willielmo Tate Clerico ac dilectibusque etc.) salutem Sciatis quod nos de fidelitatibus, industriis et providis circumspectionibus vestris plurimum confidentes, assignivimus vos duodecim, undecim (etc.) aut quatuor quorum aliquem vestrum Vos praefatos Cuthbertum, Brianum, Th. Magnus, Th. Tempest, Th. Fairfax, Robert Bowes et Wm. Babthorp unum esse volumus, Justiciarios nostros ad pacem et etiam Commissionarios nostros ad inquirendum et inquiri faciendum per sacramentum proborum et legalium hominum infra comitatum Ebor. civitatem Ebor. et comitatum eiusdem, Villam et portum nostrum de Kingston-super-Hull et comitatum eiusdem, ac aliis viis, mediis et modis quibus melius sciveritis aut poteritis tam infra libertates quam extra per quos rei veritas melius sciri poterit de quibuscumque congregationibus et conventiculis illicitis, coadiunctionibus, confederationibus Lollardiis, misprisionibus, falsis allegantiis, transgressionibus, riotis, routis, retentionibus, contemptibus, falsitatibus, manutentibus, oppressionibus, violentiis, extortionibus et aliis malefactis, offensis et iniuriis quibuscumque, per quae pax et tranquillitas subditorum nostrorum in comitatibus et locis praedictis gravatur aut imposterum gravabitur, per quoscumque et qualitercumque factis sive perpetratis et extunc fiendis sive perpetrandis, et per quos vel quem, cui vel quibus, quando, qualiter, et quomodo, ac de aliis articulis et circumstantiis praemissis seu eorum aliquo qualitercumque concernentem plenius veritatem exprimentibus Et ad easdem congregationes, conventicula illicita, coadiunctiones, confederationes et cetera omnia praemissa tam ad sectam nostram quam quorumcumque subditorum nostrorum pro nobis aut seipsis prosequi aut conqueri volumus secundum leges et consuetudines regni nostri Angliae vel aliter secundum sanas discretiones

vestras audiendum, discutiendum, decidendum et terminandum, Necnon quascumque actiones reales seu de libero tenemento et personales actiones debitorum aut demandorum quorumcumque in comitatibus et locis praedictis quando ambo partes vel altera pars sic gravata paupertate fuerit quod commode ius suum secundum communem legem regni nostri aliter prosequi non possit finaliter secundum leges et consuetudines regni nostri Angliae vel aliter secundum sanas discretiones vestras audiendum, discutiendum, decidendum et terminandum Sententiasque precepta, decreta, et ordinationes vestras factas, executiones, demandas fieri faciendum et quoscumque non comparentes vel sententiis, praeceptis, decretis aut ordinantibus vestris non obedientes aut repugnantes capi et attachiari faciendum et secundum sanas discretiones vestras castigandum et puniendum, Necnon ad fines quoscumque super riotis, routis vel ceteris praedictis, et supra numerum viginti personas usque ad quem cumque numerum levari faciendum, salvis nobis amerciamentis et aliis ad nos de praemissis spectantibus.

Mandamus enim tenore praesentium vicecomitibus nostris comitatum et locorum praedictorum et eorum cuilibet quod ad singulas dies et loca quos vos duodecim (etc.) vel quatuor vestrum, quorum aliquos vestrum vos praefatum Cuthbertum, Brianum (etc.) unum esse volumus de tempore in tempus eis scire feceritis, venire facere coram vobis tot et tales probos et legales homines de ballivis suis, tam infra libertates quam extra, per quos rei veritas melius sciri poterit et inquiri Damus itaque universis et singulis ducibus, comitibus, baronibus, militibus, maioribus, ballivis, senecallis, constabulariis ac aliis officiariis, ministeris et fidelibus legeis nostris quibuscumque tam infra libertates quam extra tenore praesentium in mandatis quod vobis et cuilibet vestrum in praemissis faciendum et exequendum attendentes sint, assistentes, auxiliantes pariter et obedientes in omnibus diligenter volumus itaque quod omnes et singulae aliae commissiones nostrae huiusmodi effectus ad inquirendum, audiendum et determinandum in comitatibus et locis praedictis quibuscumque personis antehac directas Necnon omnes et singulae commissiones pacis nostrae quam separatim factae seu imposterum fiendae sunt justiciariis nostris ad pacem in comitatibus et locis praedictis et eorum aliquo conservandum assignatis Ac omnia et singula in eisdem commissionibus et earum qualibet contenta sive imposterum continenda hiis literas nostris patentibus nonobstantibus in suo robore permaneant et effectu Et quod hae literae nonobstantibus aliis commissignibus tam ad inquirandum, audiendum et terminandum quam ceteris commissionibus pacis nostrae in eisdem comitatibus et locis praedictis aut eorum aliquo conservandae quibuscumque personis ante hoc tempus factis sive concessis aut imposterum fiendis aut dirigendis in omne suo robore permaneant et effectu In cuius rei, etc.

APPENDIX V.

i.

'Regulations for the Council oe the North', July 1484. (*Harl. 433 f. 264 b.*)

These Articles folowing be ordeyned and stablisshed by the kinges grace, to be used and executed by my lord of Lincolne, and the lordes and other of his counselle in the North Parties for his suretie and welthe of thenhabitantes of the same.

(1) Furst, the king wolle that none lord ne other persone appoynted to be of his counselle, for favor, affeccion, hate, malice, or mede, do ne speke in the counselle otherwise then the kings lawes and good conscience shalle require, but be indifferent and no wise parcell, as ferr as his wit and reason woll give him, in all maner maters that shalbe mynestred afore theym.

(2) Item, that if there be any mater in the said counselle moved which toucheth any lord or other persone of the said counselle, than the same lord or persone in no wise to syt or remayne in the said counselle during the tyme of thexamynacion and ordering of the said mater enlesse he be called, and that he obeie and be ordured therein by the remenant of the said Counsell.

(3) Item, that no maner mater of gret weght or substaunce be ordered or determyned within the said counselle enlesse that two of thiese, that is to say (blank) with our said nepveu be at the same, and they to be commissioners of our peax throughout these parties.

(4) Item, that the said counselle be, hooly if it may be, onys in the quarter of the yere at the leste, at York, to here, examyne, and ordre alle billes of compleyntes and other there before theym to be shewed, and oftyner if the case require.

(5) Item, that the said counselle have auctorite and power to ordre and direct alle riottes, forcible entres, distresse takinges, variaunces, debates and other mysbehiavors ayenst our lawes and peas committed and done in the said parties. Amd if suche be that they in no wise can thoroughly ordre, than to referre it unto us, and thereof certifie us in alle goodly hast thereafter.

(6) Item, the said counselle in no wise determyn mater of land without thassent of the parties.

(7) Item, that our said counselle for great riottes done and committed in the gret lordships or otherwise by any persone, committe the said persone to warde to oon of our castelles nere where the said riott is committed.

For we wolle that alle our castelles be our gaole ; and if noo suche castelle be nere, than the next common gaole.

(8) Item, we wolle that our said counselle incontynent after that they have knowlage of any assembles or gaderinges made contrarie oure lawes and peas, provide to resiste, withstande, and ponysshe the same in the begynning according to their demerites, without ferther deferring or putting it in respecte.

(9) Item, that alle lettres and writinges by our said counselle to be made for the due executing of the premisses be made in our name, and the same bo be endoces with the hande of our nepveu of Lincolne undre nethe by thise wordes Per Consilium Regis.

(10) Item, that oon suffisaunt persone be appoynted to make out the said lettres and writinges and the same put in regestre from tyme to tyme, and in the same our said nepveu and suche with him of our said counselle then being present, setts their handes and a seale to be provided fre for the sealing of the said lettres and writinges.

(11) Item, we wolle and streitly charge alle and singular our officers, true liegeness and subgiettes in thise North Parties to be at all tymes obeieng to the commaundementes of our said counselle in our name and duely to execute the same as they and every of theym wolle eschue our gret displeasure and indignacion.

Memorandum, that the kinges grace afore his departing do name the lordes and other that shalbe of his Counselle in thise parties to assiste and attende in that behalve upon his nepveu of Lincolne.

Item, memorandum that the king name certen lierned men to be attending here, so that oon always at the lest be present, and at the meeting at York to be alle there.

Item, that the king grant a commission to my lord of Lincolne and other of the Counselle according to theffect of the premises.

ii.

Devices for a Council to be established in the North parties, June 1537.

(*Titus F III. 94*).

(*Forasmuch as the Duke of Norfolk being at this present lieutenant in the North parts shall be revoked home and that it hath pleased the king's majesty to determine the creation of a Council to reside there and thereof to make and ordain the bishop of Durham to be his Grace's president for the better establishment of the same in such sort as they may . . . . the more acceptable and ready service these things following be specially to be remembered*).[1]

[2] Then it . . . . be two commissions, whereof the one *must* [3] be to hear and

[1] Passages in italics are additions to the original draft.

[2] The following has been crossed out : 'Imprimis if it please the king's highness to have my lord of Norfolk to establish a council there of the inhabitants of those parties'.

[3] 'Shall' crossed out.

determine .... murder felony and other like / And the other to hear and determine all ca ... by bill wytness examination or other wyse by their discretions / And the .... in to the shires of York, Northumberland, Cumberland, Westmorland, the bishopric ... shires of the city of York, Kingston upon Hull and the Newcastle upon Tyne.

Item in the said commission of oier and determiner of criminal causes to the intent the same may be had in more reputation / it is thought necessary, if it stand with the king's pleasure that there be named my lord Chancellor, my lord of Northfolke, *my lord of Suff* [4] my lord Privy Seall, *my lord of Sussex, also my lord Admiral* [5] as chief commissioners in the same commission / and the Justices of assise in these parts to be in both the said commissions / and such number of other discrete persons inhabiting within divers parts of the aforesaid shires as it shall please the king's highness to appoint.

Item *that* [6] all bills of complaint may be exhibited [7] *to the president and there may* all ways to remain *with him* one clerke of the Council with a signet of the king's highness, for directing of precepts / and a pursuivant for [8] *to go with letters in matters* of great importance and at every [9] sessions five of the afforesaid commissioners / whereof two to be of the quorum at the least to be present.

Item one of the aforesaid commissioners to be a Master of the Chancery, and to be present at every council to take recognisances as the case shall require.

Item that ther may be a place appointed for a prison of like *sorte as the Fleet is* for punishment of contempts riots and other offences.

Item it is thought necessary that .... [10] commissioners do keep their cessions four times in the year at the least / and ofter as the case shall require by their discretions / and the most usual place of the said sessions to be at the city of York / Albeit for because that the greatest matters now apparent are within the county of Northumberland, it is thought good that the first cessions be at the Newcastle upon Tyne / and hereafter other cessions to be appointed in other places at the discretion of the said commissioners as the necessity of the causes shall require.

Item that all the king's officers stewards and all other stewards and head officers of great lordships within the aforesaid shires be resident within the said offices, or else make such sufficient deputy there / as will see the country kept in good order *and as they will answer for* and also see the king's precepts served accordingly as they ought to be.

Item that letters be sent from the king's Majesty to such personages

4 'and' crossed out.
5 'Bishop of Durham' crossed out.
6 'of the afforesaid commissioners, one to be president, unto whom' crossed out.
7 'and with him' crossed out.
8 'sending messages' crossed out.
9 'of the aforesaid' crossed out.
10 'the aforesaid' crossed out.

of the nobility and worship as be inhabiting within the said North parts and not named in the aforesaid commissions to be assistant and obedient and aiding to the said commissioners in execution of their authority as the case shall require.

Item that if it fortune any matter to be before the aforesaid commissioners which shall appear unto them to be doubtful in the law / that the said matter shall be certified at the next term then following unto *the Chancellor of England and to* the king's justices at Westminster, and after their opinions known therein to procede to the order of the same accordingly.

Item that [11] as oft as any weighty or urgent causes shall happen to be before the aforesaid commissioners [12] *when they shall think mete to know* [13] *the King's Highness pleasure the same shall then* certify the same unto his Majesty / and his most honourable council to the intent [14] *they may* be certified of his grace's mind therein / and he signify from his said council of such new instructions as from time to time shall be requisite for their proceeding in every such case.

11 'so oft' crossed out.
12 'then the said Com' crossed out.
13 'find out' crossed out.
14 'as well to' crossed out.

APPENDIX VI.

Oath of a Councillor of the North.
(Harl. 7035 No. 11).

Ye shall swear, that to the uttermost of your power, wit, will, and cunning you shall be true and faithful to the Queen's Highness our Sovereign Lady, her heirs and successors. You shall not know or hear anything that may in any wise be prejudicial to her Highness or to the Common wealth, peace and quiet of this her Highness Realm, but you shall with all diligence avail and disclose the same to her Highness or to such person or persons of her Highness Privy Council as you shall think may and will soonest convey and bring it to her Highness knowledge.

You shall serve her Highness truly and faithfully in the room and place of one of her Highness Council. You shall in all things that shall be moved, heated, disputed, and debated in any Council, faithfully and truly declare your mind and opinion, according to your heart and conscience, nowise forbearing so to do for any manner of respect of favour, love, meed, dread, displeasure, or corruption. Ye shall faithfully and uprightly to the best of your power cause justice to be duly and indifferently ministered to the Queen's Majesty's subjects that shall have cause to sue for the same, according to equity and the order of the laws.

Finally, you shall be vigilant and circumspect in all your doings and proceedings touching the Queen's Highness and her affairs. All which points and articles before expressed with all other articles signed with the Queen's Majesty's hand and delivered unto me, the Lord President of her Highness Council established in these parts, you shall faithfully observe, refer, and fulfil to the uttermost of your power, wit, will, and cunning, so help you God and the Holy contents of this Book."

APPENDIX VII.

Charges against the Council in the North, 1596.

(S. P. Dom. Eliz. cclix. No. 100).

1. They hold plea of titles and actions of all natures, as *Eiectione firme,* dowers, assizes, debts upon obligations with penalties, between persons of all estates, without respect of their abilities, whereas the commission doth authorise them to deal in those actions *'Quando ambo partes vel altera pors sit gravata pauperiate quod commode ius suum secundem communem legem Regni nostri Angliae pro sequi non potest.'*

2. Also they make injunctions and orders to stay proceedings in Suits at the Common Law and in the Chancery.

3. From the time of the making of the said Commission till of late years, they did hear Common Causes at the iiii sittings and did deal in the vacation time but with rowts and great outrages, and now they compel men to appear in debts upon penalties, Information upon penal laws, trespasses and *Ejectione firme,* and other actions in the vacation *super visum* upon process returnable within six days, which course began since the death of Sir Thomas Gargrave and is a great trouble to all the people having no time free to follow their private business.

4. In the vacation time they deal to remove possessions in *Ejectione firme,* and other actions by process *super visum* and Injunctions most commonly when but one of the learned Counsell is present to allow or disallow the cause, and where that dealing is neither warranted by law, nor by the commission, and is very prejudicial to the people.

5. They examine witnesses *in perpetuam rei memoriam* not warranted by the commission, nor used but of late, and enioyn men not to sue Commissions in the Chancery *in perpetuam rei memoriam;* and yet all their proceedings are only in *pax,* and they grant process *ad testificandum* in actions at the Common Law and other courts, not warranted.

6. The same Commission of the Council provideth that all Commissiones of the peace shall stand *in sue robore,* and yet the Council do by pretence of that commission make *supersedeas* to discharge the proceedings of the Justices of peace which is not warranted, and besides they never bind the malefactor to appear openly at any Sessions. whereby an exemplary punishment may be made and his faults published to the country, and they call common people 60 or 80 miles for the peace, when the same may be done in the country.

7. The Commission authoriseth four at the least, (whereof certain are

named of the *quorum*), to deal in matters judicially and to commit men to prison for breaking their decrees, which is often done by favour, and specially in vacation time, and the number is not regarded.

8. Also they stay proceedings and suits in the City of York, Chancery of Durham, and all Corporations and many Courts Barons, and deal to determine the rights of the Queen's copyholds and others, which belongeth to the Courts of the manors.

ANSWER OF THE COUNCIL IN THE NORTH PARTS.

1. The first article doth consist of two points, the one the nature of actions wherewith the Lord President and Council do deal in this Court, the other the persons whose cause they do hear and determine in the same.

To the first, it is answered that they do not deal with actions of all natures as is said, neither in the actions specially named in the proper natures and qualities, but the causes before them deduced for the most part are possessory complaints made by the subjects of those parts when the weak shall be oppressed by the stronger and violently dispossessed, spoiled, and put from their possessions and occupations, howsoever for memory the Clerk indorseth the Bill by the name of some one action at the common law to which the same may be in some sort like. In which cases for preventing of such inconveniences which would grow by multiplicities of Riot upon Riot by attempts for obtaining of possession to the great disquietness of the country, the Council of the North do use upon complaint with all convenient expedition in their sitting time summarily to hear the title proved by evidence or depositions on both parts, and upon the hearing to establish the possession where the best right to the same may appear, until such time only as the party adverse shall recover the same by the due course of the common law, whereby manifestly doth appear the good respect that this Council always had and hath of the Common Law where in the decrees they specially declare their own order not to be final and the liberty of the common law at all times to be reserved unto the subject for the trial of his right if he shall be so disposed. And this manner of proceeding howsoever the author of this complaint, not rightly judging of the good of the country, by his manner of dealing doth inform the same to be troublesome. Nevertheless, it will be acknowledged by all persons of sound and equal judgment within the same that the short and summary dealing of this Council with small charge of the subjects hath this profitably effected. It easeth the subjects in the same of their long and chargeable travel in following their suit at the Common Law and preserveth their possessions from many turbulent altercations by outward force and violence, unto which in former times the same were much more subject than at this present. And for the most part doth so end all controversies between the parties as that neither side do after sue at the common law for the same.

Touching complaints by bills of equity for the thirds of widows, the same

be very rare within the commission, not three within one year and those persons of the meanest estate and calling, such as for the most part are very unmeet to follow the common law. And in such suits, if there shall be in the answer any plea allowed for Bar of the right of dower, the matter is never further proceeded in; but if the possession of the husband by the answer of the defendant be confessed, then it is used in favour of the poor widow and by the assent of both parties to authorise commissioners assented unto by them to divide and set forth a third of the same. Touching debts upon obligations with penalties, it is answered that the commission of the Lord President doth give them express authority to determine all actions and suits of debt wherein the course of the Court hath always been to give only the principal debt and no *profitum*, to the great ease of the debtor.

The second part of this article concerneth the persons whose causes they do hear and determine; for answer whereof it is to be confessed that the words of the commission are such as be remembered in the article, *Quando* etc.; but it is not in the power of a Lord President and Conncil to know the estates of men without information of the parties themselves. And the examinations of such informations offered would breed delays infinite to the parties and much difficulty and trouble to commissioners, especially in these times, if they should attend the examination of the ability or disability of suitors to follow the Common Law; for avoiding whereof it is to be presumed that the Lord President and Council in all former times, following the example of the Courts in like cases, have used to leave all persons of the North parts to their own election to resort or declare their jurisdiction, and sithens that if that had been meant to be an exception to the jurisdiction of the Court at first, it would no doubt have been pleaded commonly by the defendant, which being not, we see no cause why any private person should except against it.

2. The second article consisting also of 2 parts: the stay of suits at the Common Law and in the Chancery. It is answered that the Council in the North Parts doth not by any process of injunction command any persons to stay their suits at the Common Law in any of Her Majesty's Courts at Westminster; but for the stay of suits in H. M's High Court of Exchequer (*sic*), they have of long time used to grant injunctions when both parties have been inhabiting within their commissions, and the cause of the suit hath been of no great importance. And the same injunctions are not simply granted, but conditioned to stay suit or show cause; and upon good and reasonable cause showed, the party is set at liberty to follow his suit in the Chancery. Which manner of Injoining of suitors was and is only done for the ease of the subjects of these North Parts, for whose expedition in causes of equity the authority of a Lord President and Council, among other things, was ordained here, it being by good experience made known that contentious persons often times rather by driving their adversaries to a tedious journey than by the goodness of the cause, enforce them to compositions. And the Lord Chancellor of England and Lord Keeper of His Majesty's Great Seal

from time to time, even from the first erection of this Court, have not only well allowed of such restraint of His Majesty's subjects of these parts, but also many times when it shall appear unto them upon opening of any matter before them that both the parties were inhabiting within the Commission of the North, have used without further proceeding in the same to remit the examination of such causes to the hearing of the Lord President and Council.

3. To the third Article, wherein the author of the information suggesteth that such expedition of this Court before the Lord President and Council in the actions mentioned in the Article should be a matter of inconvenience to the country, it is answered that ordinarily all causes are determined in the four ordinary sittings appointed by the Lord President and Council in such sort as in former times they have been; and in like sort appearances and answers of the subjects ordinarily are referred to the sittings, excepting in some special cases for special causes, as in actions of debt upon obligations with penalties, the process is sometimes returnable in the vacation to pay or to show cause *super visum*, and after answer determined in the sitting time only. This for the most part happeneth between men of trade that live by buying and selling and do credit their wares and goods, whom it is good reason to expedite in the Recovery of their debts for the maintenance of the common intercourse of buying and selling in these parts, but chiefly for that in this Court the creditor doth never recover the penalty of obligations as at the Common Law, but only the principal debt. And this manner of proceeding in such actions of debt hath been anciently used in this Court, wherein the creditor desireth the more expedition for that he knoweth the Court useth to give only the principal debt, to the great ease of the debtor.

Touching the expediting of process in informations upon penal laws and statutes, it is answered that in former times for want of the due execution of penal laws in the North Parts, frauds and deceits in men of trades and misteries & other errors oppressive to the common weal were much increased to the general hurt of all men, for remedy whereof, amongst other very good orders made by his Lordship, it was upon good deliberation of the late Lord President and Council thought expedient that informers in such cases should be admitted to have their first process returnable *super visum* to call the offenders to answer speedily, it being presumed that the informers should better be relieved by the speedy answer of the party, than if the same should be deferred to the sitting which sometimes was not in four or three months. The informers should by this expedition be prevented of their private compositions with offenders, and that the offenders would stand in greater fear to transgress good laws when they should know that indelayedly they should be called to make answer. And by good experience this manner of expedition is found to be more profitable for Her Majesty, and the Laws sithence have been better regarded than before great and heinous trespasses as mayhems, batteries and bloodshed, when the parties grieved

are sometimes in peril of life, the offenders are immediately called to answer *super visum*, and upon the answer, the offender, if there be cause, is bound over to the Assises or gaol delivery to answer the grievance for the Queen, as also in the sitting time to answer the civil action of the party grieved, which kind of proceeding hath been always used in this Court. But in ordinary and small trespasses they do not call the parties to answer but in the sitting time. In like sort when men shall be forcibly or suddenly in the Vacation time expelled from their possessions or spoiled of the issues and profits of their lands or farms, in such cases the expellants are by process enjoined presently to permit the plaintiff to have again the quiet possession or otherwise to appear *super visum* and to show cause, etc. And thereby for the most part the parties expelled or spoiled are repossessed very speedily, when otherwise, riots and expulsions being for the most part committed and executed by persons the meanest of estate and haviour, the owners, if they should attend the ordinary Sittings time for the possession or calling the parties to answer, might have their lands wasted and the profits thereof consumed by persons not able to make them recompense. And this manner of expedition in proceeding hath always been anciently used.

4. To the 4th it is answered that in the Vacation times there is attendant with the Lord President or Vice-president for the time being one at least of the Council learned, and for the most part two, besides the Secretary, who for these ten years hath been also one learned in the laws. In which time of vacation if there shall arise controversies touching the possession of the subjects, it is necessary that the Council should take order for the quietness of such controversies and preventing of further inconvenience as thereby may grow, wherein they do use to proceed according to these limitations following, and not otherwise.

First, if men having been long in quiet possession shall be suddenly disturbed or disquieted by colour of pretenced titles, the L. P. & C. then attendant, upon complaint, do in favour of the first quiet and continued possession use to grant process against such as shall disturb the same returnable *super visum*, and to take order that the first quiet possession may be established until the sitting time, to the end that in the same upon hearing the cause in open court the possession may be established until the right may be tried between the said parties at the common law. And this order is rather taken to preserve and continue the ancient possession than to remove any out of possession.

Secondly, if men shall be actually and utterly expelled from their possessions in the time of vacation by riotous force and violence, then upon good and due information of a former continued and quiet possession for three years next before the expulsing, they do award Her Majesty's letters of commission to the justices of peace near unto the same place commanding them to see H. M's laws against forcible entries made and provided to be duly executed and to restore the parties that have right to the possession.

Thirdly, and if after such restitution of the possession made by the justices

of the peace, there shall be such informations of entry upon entry to be made and riot upon riot to be committed, then for the preventing thereof they do award H. M's letters of Commission to the same justices or some other to keep that party in possession. And if that notwithstanding there shall be difficulty in any of these courses, then they do call the parties before them, and labour with them for the quietness of the country to assent that the possession may be sequestered to some indifferent persons, whom either themselves or the Council attendant shall vocate and appoint for that purpose, until such time as either in the sitting or otherwise, order may be taken for establishment thereof.

And, lastly, if any man shall peaceably and quietly obtain his just and lawful possession in the time of the vacation the same is always continued until the sitting, and then further ordered as the case shall require. And this is all their manner of dealing for the continuing, removing or establishing of possessions in vacation time, which hath also been anciently used.

And when we hear upon these occasions a cause to be alleged by the defender, we do it publicly, all of the C. present giving both sides notice to enform us by their Counsel learned, upon hearing whereof we also disallow or suspend the cause till the sitting.

5. To the 5th it is answered that the Council in the North Parts doth not nor ever did enjoin any person not to sue in the Chancery for examination of witnesses *in perpetuam rei Memoriam*, neither in this Court do they use to examine any witness *in perpetuam rei Memoriam*, but if any person shall exhibit any Bill against other for such cause, they do altogether reject the same.

And as to the granting of compulsory letters *ad testificandum* between party and party within this commission, the same is very seldom or never used, and but in cases of great extremity, when by the obstinacy of witnesses, ignorant men not having obtained Her Majesty's. process *subpoena* from H. M's Court of Chancery, for want of testimony do stand in danger of the loss of their cause ; and the granting of such compulsory *ad testificandum* and for men dwelling within this commission is never prejudicial to any, for if the party forced with the compulsory letters shall not appear at his day and time, there is never any attachment granted upon the neglect of such process.

6. To the 6th it is answered that it hath been by good experience approved that the ordinary commission of the justices of Peace in the North parts, without such authority, was not sufficient to preserve H. M's peace within the same in such sort as was expedient both for the Sovereign and Subject, for the supply of which defect the commission and authority of a Lord President and Council was added to the same by H. M's most noble father King Henry VIII and ever sithence continued to this present time, whereby the said L. P. and C. in all the North parts have power to prevent all breaches of the peace, and to punish the same being broken ; and by express words of the Instructions to grant the peace without respect of persons. And as in the same commission of the L. P. and C. there is a special clause that all

hoter commission(s) of the Peace shall stand *in suo robore*. So in all times the L. P. and C. have acknowledged that all authority of the Justices of peace in the same North parts is, and ought to be, preserved according to their commission, and been desirous that both the L. P. and C. and the justices of peace within their several countries and limits might concur to use all their authorities whatsoever for the best advancement of H. M's service, and the preservation of the public peace and quietness of the country. And by such authority the L. P. & C., if any of H. M's subjects of these North parts upon good cause do require of them the peace against any in the same, they have always and do use to grant that request, and do think it their duty so to do; and having in such case taken security for this peace, if afterwards any justice of the peace within any part of the said Commission for the same cause direct their warrants against any person so bounden, they do think it consonant to reason that their *supersedeas* under H.M's Signet granted to the party bound before them should be a sufficient discharge against all justices of the peace and their warrants for that purpose as well as the *supersedeas* of any one Justice of peace is available against others in the like case. And in like sort if any will offer to bind himself before them, they do also think it fit to grant unto that party so bounden a *supersedeas* under H. M's signet against others for that cause.

And further, to the end it may appear that the said L. P. and C. have always had especial regard of the authority of the J. P's within the several countries of the North, the said L. P. and C., notwithstanding their general authority, over all places of the North for the most part have and do forbear to grant the peace in such remote parts as are mentioned in the complaint except in some particular cases upon oath of the parties, as if it shall be informed that any J. P. within their limits shall offend against the peace himself or shall deny to grant unto H. M's subjects their warrants for the peace, or that the person offending be of such alliance, friendship, or else in service with the J.P's, that the parties grieved stand in fear to demand the peace against them, as sometime it hath been enformed to H. M's Council, or if any offence against the peace committed within the Commission of the L. P. and C. shall be so extraordinarily heinous as for the example of the country of speedy punishment thereof, it shall be more fit to be examined by the L. P. and C. than by the ordinary justices of the peace in their quarter sessions.

And where it is enforced that there should be much inconvenience in the dealing of the Council of the North, for that they do not use to bind the offenders against the peace to any sessions in the country, where they might receive exemplary punishment, it is answered that punishment ot offenders before the L. P. and C. at York in their open sittings are and should be thought to be much more exemplary for the country than those of the private quarter sessions of any county or limit of the North parts, for which cause, as they are persuaded, Sir Th. Gargrave in his time, albeit he was Custos

Rotulorum in the West Riding of Yorks and present at their sessions, did use to bind the offenders to the peace until they should be discharged by the L. P. and C. in such sort as is now and hath always been used. And if at any time the offenders escape unpunished before the L. P. and C., it is for that neither the parties grieved nor the J. P's do give knowledge to the C. of their offences, which if either of them should do they would, and in such case do, take order that H. M's Attornies of the North parts shall inform against the offenders and bring them to their trial and judgment. Neither is the *supersedeas* he hath been granted any discharge to the party from such punishments as by the Laws he ought to receive, but only a discharge that he be not further bound to the peace for that cause ; which manner of binding of the subjects before this C. is very beneficial to them, in that they are bound here but once and the fees not half so much as at one session where they are travelled from session to session at the pleasure of the adversary, paying fees at each sessions for their new entry of Bonds.

7. To the 7th it is answered that all decrees are made in the Sitting time only when there is always present a complete number of the Quorum of the Commission.

And decrees being made by a competent number in the Sitting-time there doth want nothing but the execution thereof by granting the ordinary process against the party for that purpose, which any of H. M's Council in the North parts then may assign, and have always used to do, and his hand is a sufficient warrant for the Signet. And also if any person upon such process by the Sheriff or other officer be brought into prison, they do hold the same to be just and lawful. In like sort if any person sentenced by their decree in open Court shall, after process awarded against him for performing thereof contemptuously refuse so to do, then upon such contempt they do use if the same party be afterwards present in the city of York or any other place where the said C. shall then remain, to grant a warrant from any of them to H. M's ordinary Pursuivant or tipstaff for apprehension of the party, which is a sufficient authorority for his apprehension and imprisonment upon the same decree, and such hath been the manner and usage of this C. from the first erection of the same to this present time.

8. To the 8th it is answered that from the City of York, the county Palatine of Durham, and other Liberties and Corporations within the province of the Commission of the L. P. and C., in which Liberties matters been heard and determined according to the course of the Common Laws of the Realm or the Court of Chancery, there been many times complaints exhibited unto the L. P. and C. of very unconscionable proceedings of diverse of the subjects that in these courts do make their demands of extreme penalties and forfeitures, or that the Judges and Ministers of such Courts are either parties to the Suit or their kinsmen, servants or friends to the same party, and by reason thereof do deal in such causes with such extraordinary favour and affection as is contrary to all equity and good conscience. Which manner of dealing would be very common in the Liberties of the North

parts if there were not near and ready mean for the moderation thereof. And the same being made known to the said L. P. and C., for the relief of the petitioners this Court hath and doth use in like cases to grant process against the parties and their Solicitors and Attorneys to stay such proceeding in those Courts and to have the equity of the cause first examined before the Lord President and Council. And if upon the appearance of the party there shall be good and reasonable cause showed, whereby it may appear that their proceedings are according to equity and conscience, then they do presently remand the same cause, allowing to the party his reasonable costs for his unjust molestation by their process. And if they shall think good to retain the cause until the equity may be examined, then to the end the party plaintiff in the first action may be assured to have his reasonable demand by order of the Lord President and Council, or in the Court where he was first plaintiff they do take the plaintiff, bound with good sureties as well to abide the order of the Lord President and Council as the order of the Court of the liberty if the cause shall be remanded to the same. And if upon the hearing of the cause before them it shall appear that the plaintiff in the former suit shall have attempted the same in such extremity as in equity is fit to be moderated, they do only qualify the rigor and give unto him his just and reasonable due, allowing him, notwithstanding, costs as well for the first suit in the franchise where he was plaintiff as in his suit before the same Lord President and Council where he then shall be defendant. And we can show sundry precedents in this court of suits stayed in Durham Court by Injunction from this Council when Tunstall was Lord President here and Bishop of Durham, being about 50 years sithence. But we think it a very strange attempt that Injunctions should come forth under that County Palatine Seal to command men to surcease their suits before His Majesty's President and Council in the North such as the now Bishop of that See hath awarded sithence the death of the last Lord President.

Touching copyholders, it falleth out often in these parts that Landlords refuse to admit their Tenants upon death or alienation without fines arbitrable at their wills, and also that tenants many times claim to pay fines certain for their admission, where the same been arbitrable at the will of the Lords. In which causes, it is used upon complaint to moderate both the one and the other. It happeneth also sometimes that controversy groweth between the heirs of copyholders, or between the heirs and purchaser, for the possession thereof. In which case it is used to hear the title of both parties as in case of freehold and leases for years before remembered. And upon hearing the possession is established where the best right shall appear until the other party shall recover the same possession at the Common Law or in the Court of the manor. If any doubt or question shall arise merely touching any custom, then the cause is referred to be tried within the manor, with such caution for preventing of partiality there in the Steward, or Jurors, as may be thought fit and expedient.

Whensoever any cause shall concern His Majesty's copyholders, if the same shall so appear to the Lord President and Council by the answer of the defender, and if he desire to be remitted to the Exchequer, Duchy or other Court, as the case shall require, then it is used without any further hearing or intermeddling in the Cause to remit the trial of the right in the same accordingly, with caution and direction for the quietness in the possession in the meantime as the necessity of the cause shall require and as is before remembered.

This is the manner of proceeding in His Majesty's Court before the Lord President and Council in the North parts, in these particular cases as they are set forth, and grounded upon His Majesty's commission, and Instructions given to the Lord President and Council in the same. Wherein albeit many special directions for ordering of causes are set forth, yet for that every considerable circumstance touching their proceedings could not conveniently be expressed, many things are committed unto them to be ordered by their direction which they with all dutiful regard have always endeavoured in their actions so to moderate and direct, as might chiefly tend to the maintenance of the public peace of the country and the preservation of the right of the subjects in their particular estates.

And the said Council do most humbly pray that your honourable Lordship will be pleased to continue your favourable countenance towards the same, until by good proofs they shall be duly convinced of any wilful injustice in their proc edings.

Matt. Ebor
E. Stanhope
Ch. Hales
Jo. Ferne.

1596.

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[*L. P. denotes a Lord President of the Council in the North, C a Councillor.*]

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